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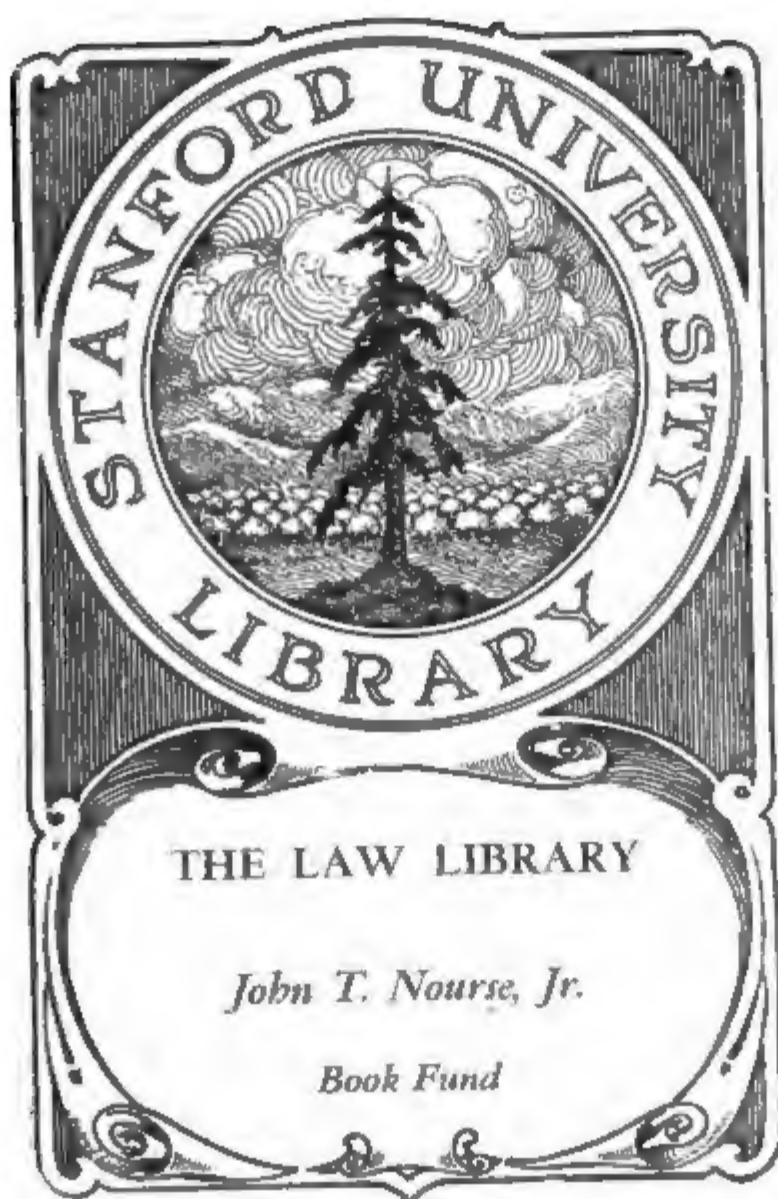
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CHARGES

OF THE

BAR ASSOCIATION OF NEW YORK

AGAINST
HON. GEORGE G. BARNARD

AND
HON. ALBERT CARDOZO,
Justices of the Supreme Court,

AND
HON. JOHN H. MCCUNN,
A Justice of the Superior Court of the City of New York,

AND
Testimony thereunder taken before the Judiciary Committee of the
Assembly of the State of New York, 1872.

Hon. L. BRADFORD PRINCE,
Chairman of the Committee.

JOSHUA M. VAN COTT,
JOHN E. PARSONS,
ALBERT STICKNEY,

*Committee of the
Bar Association.*

GEO. TICKNOR CURTIS,
RUFUS F. ANDREWS,

*Counsel for
Judge Barnard.*

WILLIAM FULLERTON,
EDWARD H. OWENS,

*Counsel for
Judge Cardozo.*

Continuation of Evidence

Taken before the Judiciary Committee of the Assembly of the State of New York, appointed to investigate the charges made by the BAR ASSOCIATION of New York against HON. GEORGE G. BARNARD.

NEW YORK, March 8th, 1872.

The Committee met, pursuant to adjournment, at twelve o'clock.

Present:—Hon. L. B. PRINCE, Chairman, and Messrs. TILDEN, VEDDER, FLAMMER, HILL, NILES and HAYES.

DAVID DUDEEY FIELD, sworn ; examined by Mr. STICKNEY :

Q. You were subpoenaed to produce certain papers. The first one was the order appointing Fisk and Courter Receivers of the Albany and Susquehanna Railroad Co., in the Chase suit. Have you that paper with you? A. Yes.

Q. Will you produce it? A. Yes, here it is. (Witness produces paper.) I produce it, but it is an original which I cannot part with. I will let it be taken down as I read it. It is a paper in respect to which it is charged to be forged, and I would not allow it to go out of my possession under any circumstances. I will read it, or allow a copy to be taken while I am present.

Q. Will you state in whose handwriting the body of that order is? A. Mr. Shearman's.

Q. And the signature at the end of it, after the consent that appears on the second sheet—are you familiar with the handwriting of the gentlemen whose names purport to be signed there? A. I don't think I know the handwriting of any, excepting Mr. Herrick ; that I do.

Q. That is his signature there? A. I have no doubt of it.

Q. And the signature of Judge Barnard is his signature? A. It is.

Mr. STICKNEY :

We offer that in evidence.

Q. You had no personal knowledge yourself as to what took place at the time of the granting of this order? A. None at all.

Q. Will you leave this order in the possession of this Committee during this examination? A. No.

By Mr. NILES :

Q. You will, if the Committee direct it? A. I don't mean to say, if the Committee order it out of my possession, what I will do.

Mr. CURTIS :

I don't see why it can not serve the purposes of public justice, and of all parties interested in this investigation, for Mr. Field to read this paper, and have it taken down on the record. It is testified by him, distinctly, that that is Judge Barnard's signature, and we claim it as his signature. It is testified, too, that he knows the signature of one of the consenting parties to the order. Now, of what use can it be to the Committee to have the original paper?

Mr. NILES :

I understand, from the suggestion or the intimation of the witness alone—I never heard of it before—that it has been charged that that is a forgery. If so, he is the witness to settle that question.

Mr. ANDREWS :

Mr. Stickney don't charge it.

Mr NILES :

If it is retained here, it will be kept very sacredly, and returned very safely. If that is the question, whether it is a forgery or not, we cannot allow it to be brought in here and carried away.

MR. CURTIS :

There is no such charge in the specification, and Mr. Field has referred only to what occurred out of doors, abroad, in regard to that paper.

MR. HAYES :

Have you any objection to his reading it?

MR. PARSONS :

The questions we may put to other witnesses will involve the necessity of having it here.

MR. STICKNEY :

It is very essential to us, in the examination of other witnesses, that the order, itself, should be here, to be submitted to them at the time of the examination. We request, therefore, that the Committee will, by any means in its power, secure the presence of the paper here.

THE CHAIRMAN :

That is, I suppose, the objection in the case in reference to many previous papers, that many witnesses were examined in regard to the handwriting of various papers, a thing which it would be impossible to do by means of a copy.

MR. PARSONS :

We were embarrassed on the examination of Mr. Dudley Field on account of not having the original papers here, which made it impossible for him to give testimony which he could have given if the papers were before the Committee.

MR. CURTIS :

If there is a positive order made by the Committee that this paper pass into their possession, then they are obliged to report it in the evidence, and they will be obliged to place it on the files of the Legislature. That is not the proper place for it.

THE CHAIRMAN :

Oh, not at all; the paper will be returned to Mr. Field by Monday.

By MR. CURTIS :

Why not take this course: that the paper be placed in my hands, subject to the call of the counsel prosecuting at any moment when they wish to submit it to another witness.

MR. STICKNEY :

We have no objection.

The CHAIRMAN :

Only it reflects on the Committee.

Mr. CURTIS :

No, sir ; it only relieves Mr. Field's difficulty. I withdraw all suggestions in regard to it.

Mr. D. D. FIELD :

The paper is mine ; the suggestion, or intimation, or charge, has been made that it was forged. Being a reflection upon the attorneys who are my partners, I don't intend that that paper shall go out of my possession unless I am compelled to do so, and if the Committee make an order that it shall be left here, then I shall act according to my view of what is right.

Mr. NILES :

How is it that an original order of the Supreme Court in a case which has been tried, and which now, as I understand, is actually pending in the Court of Appeals, is the property of one of the counsel in the case ?

Mr. D. D. FIELD :

It is one of those orders which, I suppose the gentleman knows, need not be filed ; it don't belong to the files of the Court ; it belongs to the person whose title is created by it, and that is the Receiver's. We are the counsel for the Receivers, and we act for them. It is one of the orders that are made out of Court under the authority of law, and is not to be filed.

Mr. NILES :

So far as I am concerned, I suppose you have a right to have a certified copy of an order, and I am not aware that any original order of the Court is a thing which one of the counsel has a right, of his own motion and will, to carry away from the files and from the opposite counsel and every one else.

Mr. D. D. FIELD :

When the counsel in the case ask for it they know how to get it ; they have only to apply to the Court ; that is not a case in which any one is counsel except myself, so far as I know. The Committee, of course, will understand that there is not the least distrust, in regard to any member of the Committee, in regard to keeping it. But papers are lost, and that is a paper of so much importance that I have carefully kept it for a year or so, and I don't intend that it shall go from me except by force. If I am compelled to part with it, that is my justification.

Mr. NILES :

As far as I am concerned, I am perfectly willing that either

of the counsel for Judge Barnard, or Judge Barnard himself, or any one else, shall take the the custody of this paper while it is required for use, but I am not willing that a witness shall come into the Committee and state: "I will not permit this paper to remain with the Committee for half an hour."

Mr. D. D. FIELD :

I take it, that by being a witness a man does not lose his right to the possession of what he has by law ?

Mr. NILES :

I suppose if it was a bank-bill, and the question was whether it was a forgery, we would have a right to hold it here until we could determine whether it was a forgery or not ; but I only speak here my individual view with regard to it. I have the apprehension that this Committee is careful of documents, and is faithful to their duties, every member of it, and there is no more danger in leaving a paper with the Chairman of this Committee, for a day, than there is in leaving it with any counsel at this Bar.

Mr. D. D. FIELD :

I would make no suggestion in regard to it ; I only say I am not willing to leave it.

Mr. NILES :

I understood you to say : "I will not leave it?"

Mr. HAYES :

He said he would not leave it unless he was compelled to leave it.

Mr. NILES :

Is there any objection to Mr. Curtis taking this paper in his possession, or Mr. Field remaining with it.

The CHAIRMAN :

All I suppose is desired is, that it shall be here when required. Have you any objection to leaving it with Mr. Curtis ?

Mr. D. D. FIELD :

Not the slightest.

Mr. NILES :

Have you any objection, Mr. Stickney ?

Mr. STICKNEY :

Not the slightest.

WITNESS :

“ Supreme Court: Azro Chase v. the Albany and Susquehanna R. R. Co., Joseph H. Ramsey, Jeremiah J. Austin, Jacob Leonard, William A. Rice, Charles Courter, John Westover, John Cook, David Wilbur, Eliakim R. Ford, Samuel North, Ira E. Sherman, Alonzo Everts, and Jonathan R. Herrick.

“ On the complaint in this action, and the affidavits hereto annexed, and the consent of sundry defendants, I do order that Charles Courter and James Fisk, Jr., be, and they are hereby appointed Receivers of all the property, franchises and effects of the Albany and Susquehanna R. R. Co., with all the power and authority of Receivers in like cases ; that the said Receivers file with the Clerk of this Court, and deposit with the Judge thereof, to be afterwards filed, a bond with two sufficient sureties in the penalty of \$100,000 for the faithful performance of their duties ; that they take immediate possession of the said property, and receive all moneys, and make all payments necessary or proper for the due operation of the road ; that they have power to employ counsel and such assistance as they may require ; that they pay for the legal expenses attending their appointment, and that they be empowered to do all things which any or all of the existing officers, agents and servants might lawfully do ; that said Receivers shall not be personally liable, except for their wilful wrong or gross personal negligence ; and let the defendants show cause before me at a Special Term of this Court, in the Court House, in New York city, on the 16th day of August, 1869, at noon, why this order should not stand and a further order be made in the premises.

“ New York, August 6th, 1869.

“ GEORGE G. BARNARD,
J. S. C.

“ We consent to making the annexed order.

“ New York, August 6th, 1869.

“ Samuel North, Azro Chase, Alonzo Everts, Jonathan R. Herrick, David Wilbur, Jacob Leonard, Charles Courter. The Albany and Susquehanna R. R. Company.

“ JONATHAN R. HERRICK, V. P.”

The CHAIRMAN :

Read the endorsements, if they are material.

WITNESS :

I don't know that they are. You can judge for yourself if you deem them material.

By the CHAIRMAN :

Q. Is that in your printed case? A. I don't think it is.

Mr. STICKNEY :

It is not. (Paper marked, "Charge 2, O).

By Mr. STICKNEY :

Q. Will you look at the endorsement, "Supreme Court," and the names of the parties to the suit, on the outside of this order, and state if you know whose handwriting that endorsement is in? A. Really, I cannot say, except that the words, "consent, Field & Shearman, plaintiff's attorneys," I think, are in the handwriting of Mr. Sterling.

Q. But the name of the Court? A. I am not sure. I would not venture to say whose handwriting I think it is.

Q. What is your best information or opinion on that point? A. I give you no opinion at all; I have no knowledge on the subject, and I could not tell for the life of me whose it is.

Q. Have you any idea or opinion whose it is? A. I refuse to answer any further than I have. As to making a guess, I am not bound to guess for you.

Q. Have you ever seen that handwriting, or similar handwriting, before? A. I don't know whether I did or not.

Q. What is your best opinion as to whose handwriting that is? A. I have already answered the question sufficiently, as I submit to the Committee.

Mr. STICKNEY :

We submit to the Committee whether the witness has or not.

Mr. NILES :

I understand the gentleman to say he has no knowledge on the subject.

Mr. STICKNEY :

He has not said he has no opinion.

The CHAIRMAN :

I suggest that that would be a proper question to ask, whether he had an opinion, or if he had an opinion.

Q. Have you any opinion as to whose handwriting that endorsement is in? A. I have none whatever.

Q. What was the first proceeding in the Albany and Susquehanna litigation in which you had any direct personal concern?

A. Do you mean by "personal concern" personal participation?

Q. Yes. A. The first was on Monday, the 9th of August, when being at my place in Stockbridge, Mass., I received a telegram requesting me to come to Albany. I telegraphed back

that I would come in the afternoon train. I left my house, I think, at 1.30; drove seven miles to the State Line; there took the railway to Albany, and arrived at Albany about five o'clock in the afternoon. There I found Judge Amasa J. Parker, John Ganson, and my partner, Mr. Sterling, who informed me that they were then engaged in a litigation respecting the Albany and Susquehanna Railroad Company. That was the first that I had any participation in it.

Q. What was the first paper that you yourself drew, or directed to be drawn, on or after your arrival in Albany? A. I have no recollection.

Q. Did you, on Monday, the 9th of August, at any time direct Mr. Sterling to prepare any papers for Judge Barnard's signature? A. I don't remember.

Q. Did you, at any time, on August 10 (Tuesday), prepare any papers or orders for Mr. Sterling to take to Judge Barnard? A. I have no recollection of any.

Q. Did you, at any time on Tuesday, the 10th of August, direct Mr. Sterling to take any papers to Judge Barnard for his signature? A. I have no recollection of doing so.

Q. Did you, at any time on Tuesday, the 10th of August, direct Mr. Sterling to go to Poughkeepsie to get any order signed by Judge Barnard? A. Not that I remember.

Q. Did you, at any time on Tuesday, direct Mr. Sterling to obtain any writs of attachment from Judge Barnard? A. That question has been put already, I think, in answering whether I obtained orders or asked for orders. I have no recollection of dictating, drawing, or directing to be procured, any order, writ, process, or paper of any kind, on Tuesday, the 10th of August. I may have done so in respect to several.

Q. Did you have any conversation with Mr. Sterling on the 10th of August in relation to his going to Poughkeepsie? A. I have no recollection of any.

Q. Do you know whether Mr. Sterling did go from Albany on the 10th of August to Poughkeepsie? A. I don't remember.

Q. Do you know whether he left Albany with the intention, or with the expressed intention, of going to Poughkeepsie on the 10th of August? A. No, I don't remember. I have no recollection on the subject.

Q. Did you hear anything said by Mr. Sterling about going to Poughkeepsie? A. I have no recollection of hearing anything.

Q. Did you hear anything said by Martin D. Conway as to Mr. Sterling going to Poughkeepsie, or having gone there on the 10th of August? A. I will answer the question, though I must submit that this whole course of examination seems to be grossly impertinent. I have no recollection that Mr. Conway said anything on the subject; but if I had, I fail to perceive how

my conversation with Mr. Conway can have anything to do with this investigation.

Q. Did you have any conversation with any one on that day in regard to Mr. Sterling going to Poughkeepsie? A. Not to my recollection.

Q. Can you state positively that you did not? A. I have already answered that question, as much as I think it expedient that I should.

Q. Can you state positively that you did not? A. I have said that I had no recollection of doing so. They ask if I can state positively I didn't. How could anybody do that?

Mr. CURTIS :

Is it proved that Mr. Sterling did go to Poughkeepsie on the 10th day of August?

Mr. STICKNEY :

It will be. We have to begin our evidence somewhere.

Mr. CURTIS :

I was not present yesterday.

Mr. STICKNEY :

No, it is not.

Q. Did you have any conversation with Amasa J. Parker in relation to Mr. Sterling going to Poughkeepsie on the 10th of August? A. My conversation with Mr. Parker was a conversation between two associate counsel. I refuse to disclose that conversation in any respect whatever.

The CHAIRMAN :

I think that won't do.

Mr. D. D. FIELD :

Then the Committee must make an order that I must state what conversation I had with my associates. If I am obliged to answer one question, I am obliged to answer all. I would like to know by what right, when two gentlemen are consulting about a case, one lawyer is to say what the other said.

The CHAIRMAN :

I don't think that is the question.

Mr. D. D. FIELD :

If the Committee will rule upon that, I will say what I will do. Judge Parker, I have already stated, was associate counsel with me in that matter. I object to giving any conversation that I had with my associate counsel, in respect to the conducting of the case, in any respect whatever.

The CHAIRMAN :

We cannot limit the Bar Association very well as to their manner of examination. You will answer that question.

By Mr. STICKNEY :

Q. Did you have any conversation with Amasa J. Parker in relation to Mr. Sterling going to Poughkeepsie on the 10th of August? A. I have no recollection on the subject.

Q. Did you have any conversation with John Ganson as to Mr. Sterling going to Poughkeepsie on the 10th of August? A. The same answer.

Q. Did you see any papers that were drawn, to be taken by Mr. Sterling, or by any one, to Judge Barnard, or to Poughkeepsie, on the 10th of August? A. I have no recollection of any.

Q. Do you know of any papers that were drawn, and that Mr. Sterling took to Poughkeepsie, or that you were informed he took? A. I have already stated I have no recollection of it. That includes I have no knowledge.

Q. The question before was whether you saw them? A. No; it was whether I had any recollection.

Q. Were you informed by any one whether Mr. Sterling did go to Poughkeepsie on Tuesday, the 10th of August? A. I decline to answer that question, as irrelevant and improper. That includes information received from my clients, which I should do very wrong to answer.

Q. I will alter the question. Have you been informed by any person, other than one of your clients, that Mr. Sterling went to Poughkeepsie on the 10th of August?

Mr. CURTIS :

Is that not asking hearsay?

The CHAIRMAN :

We admit hearsay evidence.

Mr. D. D. FIELD :

Has that been ruled by the Committee?

The CHAIRMAN :

Yes; we take it for what it is worth. We are an Investigating Committee, not a legal one.

Mr. NILES :

We don't take hearsay evidence as proof of facts, but we take the fact that some one made a statement, in order that they may follow up that statement, if they choose. It may be that the very declaration of some one is a material fact, in the course of the investigation.

WITNESS :

I have no recollection of ever hearing such information. The rights of third persons are involved, to say nothing about the accused. That this Committee should be made a sieve through which everything should come, I cannot suppose.

By Mr. STICKNEY :

Q. Was Mr. Sterling in Albany during the whole of Monday, the 9th of August, or did you see him there at any time after your arrival? A. Mr. Shearman and Mr. Sterling met me on my arrival. I cannot remember when he left Albany, whether he remained as long as I did or not.

Q. How long did you remain there? A. Until the afternoon of the 11th.

Q. That was Wednesday, was it not? A. You know as much about that as I do. The 9th, I told you, was Monday.

Q. What was the last time on Tuesday, the 10th of August, that you saw Mr. Sterling? A. I don't remember.

Q. Have you no recollection on that point? A. Not the slightest.

Q. Did you see him at any time during Tuesday evening, the 10th of August? A. I think I have answered that question already.

Mr. STICKNEY :

We ask for an answer to that question.

The CHAIRMAN :

I understood the witness to say it had been answered before. It has not.

WITNESS :

I am asked if I have any recollection of seeing him on Tuesday, and I say not the slightest. The question was : "Have you any recollection on that subject?"

By Mr. STICKNEY :

Q. As to the last time you saw him? A. I have no recollection.

Q. Did you see him at any time on Tuesday, the 10th of August? A. I have no recollection on the subject. I have told you I don't know when he left Albany, or when I saw him last.

Mr. STICKNEY :

We may not be satisfied that you have already told us once, according to your suggestion.

WITNESS :

Your question is an impertinent one, and, if you repeat it, I

will answer no more of your questions. You will get no answers if you go on in that way.

Q. Did you see Mr. Sterling at any time on Wednesday in Albany? A. I don't remember.

Q. Did you see Mr. Sterling in Albany at all after he met you on your arrival there, and before you went away from Albany yourself? A. I submit that that question has been answered.

The CHAIRMAN :

I think not. You have only gone as far as Wednesday. I don't know how long you were in Albany.

WITNESS :

I have already answered I left on Wednesday.

The CHAIRMAN :

Q. Do you recollect seeing Mr. Sterling at any time after Monday in Albany? A. I met Mr. Sterling when I arrived at Albany, but I have not the slightest recollection whether I saw him again or not.

By Mr. TILDEN :

Q. At any time during that affair? A. At any time at all until I left myself.

By Mr. STICKNEY :

Q. Have you any recollection of any papers that you drew at any time during that stay of yours at Albany, or that were drawn by any one in this litigation? A. None, except a paper which was signed by the two sets of Receivers claiming the road, to surrender possession to a person designated by the Governor, the circumstances of which were these : On the evening—

Mr. STICKNEY :

We don't desire that.

WITNESS :

But I do.

Mr. CURTIS :

Excuse me for a moment. Perhaps it might be as well to reserve your statement in regard to that to a future time. When it comes my turn to ask you a question, I will ask you in reference to that.

Mr. TILDEN :

I think you might as well state it now. We don't intend to be governed by any particular order, but to get the truth.

WITNESS :

When I arrived at Albany I found, or I was informed, that a litigation had been going on during the previous week in respect to the affairs of the Albany and Susquehanna Railroad Company, the details of which I postpone, in deference to the suggestion made by counsel now, to a subsequent period, and I will give only the general features. I found that the litigation had resulted in there being two sets of Receivers in possession of the two ends of the road, each having a force under their command or control, endeavoring to drive the other from the possession of the other end, or of the rest of it.

By Mr. TILDEN :

Q. Was this when you first arrived in Albany? A. Yes, sir. What I saw and heard made me fear that there would be violence and bloodshed. I inquired if the Governor was in town. I was told that he was absent at West Point. I then inquired if his Private Secretary, Mr. Van Buren, was in town. In answer to that message an under secretary or clerk came down to the hotel where I was. I told him I thought it was important, to avoid violence, that the Governor should be sent for at once. My idea was not to use the military at all, but that the Governor should issue a proclamation to the Sheriffs of the counties to keep the peace. The clerk undertook to communicate with the Governor. We got word that the Governor could come back to Albany on the following day. The following day, or the following evening, he did return. I didn't see him that evening, being in bed when word came to me that he had returned, but Mr. Ganson was up, and he volunteered to go up and see the Governor. He went and returned and reported to me that night that the Governor would intervene, and that he wished to see me and others the next morning. The next morning I went to the Executive Chamber, where I met Judge Allen, who was counsel for the rival Receivers, I think—counsel for the other side—and there a paper was drawn and submitted to the Governor, agreed to and signed there, which is the paper a copy of which is in the case of the People v. The Albany and Susquehanna Railroad Company. This statement I make from general recollection, and I don't mean to say that I am certain that in all its details it is precisely accurate.

By Mr. STICKNEY :

Q. Between what two Receivers, or sets of Receivers, were violence and bloodshed apprehended? A. Between Robert H. Pruyn, appointed by Judge Peckham, and Courter and Fisk, appointed by Judge Barnard.

Q. And Fisk and Courter were your clients? A. Yes, sir.

A. Acting under advice of yourself, or some member of your firm? A. They were acting under the advice of all the counsel who

were there, I believe—Parker, Mr. Ganson, myself, my partner, and Mr. Hamilton Harris. I think there may have been some other counsel there, but I don't remember.

Q. When did you next go to Albany?

(Not answered.)

(The examination of this witness was here suspended.)

Mr. WILLIAM ORTON, sworn:

By Mr. STICKNEY:

Q. You are the President of the Western Union Telegraph Company? A. I am.

Q. Was there a subpoena served on you, directed to the Western Union Telegraph Company, requiring the production of certain telegrams passing between George G. Barnard and James H. Coleman, on the 6th day of August, 1869? A. A subpoena to that effect was served on me.

Q. Have you produced any? A. I have not.

Q. Do you know of the existence of any such telegrams? A. I do not.

Q. Have you caused any examination or search to be made for such telegrams? A. I have.

Q. Do you know whether or not any such telegrams are in existence now? A. I do not.

Q. What examination have you caused to be made for them? A. The files of the office at Poughkeepsie and the files in some of the offices in New York were directed to be examined, and a report was made to me of the result.

Q. What examination did you direct to be made? A. I directed that such search should be made as would result in producing these messages, if they were in existence.

Q. To whom did you give those directions? A. To the Superintendent, General Thomas T. Eckert, and John C. Hinchman.

Q. Have you stated fully all the directions you gave to them? A. I think I have, sir. I have not intentionally withheld anything, at all events. I desired to have the telegrams produced, and I gave such instructions as would produce them, if they could be found.

Q. What New York office did you direct an examination of the files of? A. I was not particular as to details. Will you allow me to make an explanation?

Mr. STICKNEY:

Certainly.

WITNESS:

It is my impression that the messages covered by your subpoena were produced on an occasion two or three years ago, of some proceeding in Court at Albany, were withdrawn from the

files and produced there. I have an indistinct recollection of reading in the proceedings of some case pending at Albany an account of the production of what I understood on the receipt of this subpoena to be the messages covered by it. What disposition was made of the papers after their production I am unable to state, as it is my impression that that matter was in charge of Mr. Palmer, the then Secretary and Treasurer of the Company, who is now in Europe. All the messages of that date, however, have been destroyed, in pursuance of the practice of the Company not to retain its files longer than two years. And the report made to me as to the result of this examination, was that all the messages of that date of that year in the offices had been subsequently destroyed, which we assume would include those covered by the subpoena, unless they had been in some manner preserved on account of their having been withdrawn for use in the case to which I have referred.

Q. Will you give the names of the employés or officers of the Company who have personally made this search? A. I cannot; I don't know.

Q. Have you any knowledge or information as to when the telegrams of that day, or that date, were destroyed? A. I have not; I can give you information that will lead to the determination of that fact.

Q. We will be obliged to you if you will do so. Do you mean that you could do so now? A. Yes, sir. It is the custom of the Company, at no fixed periods, but at its convenience, to carefully gather together the messages up to within two years, not being very particular as to a month or two, or three, more or less. They are taken in charge by our Superintendent of property and supplies, Mr. William Hunter, who usually attends personally to their being packed, and afterwards sent to a manufacturer of paper from whom we receive supplies of paper, and he superintends their deposit in the vats and sees that they are reduced to pulp—actually destroyed, the object being, of course, to protect, as far as it is in our power to do so, any improper exposure of the confidences which are confided to the Telegraph Company.

Q. Who is the person, or officer, who has charge of that? A. Mr. Hunter had charge of the last disposition of it.

Q. And probably, as far as you can judge, if those telegrams of that day had been destroyed, they were destroyed under his superintendence? A. I presume so.

Q. What is your custom as to the preservation or destruction of telegrams in offices other than the New York city offices? A. I cannot speak positively as to that. I have an impression that the same regular practice, as to the times of their destruction, does not prevail as to other offices.

Q. Is any record kept by Mr. Hunter, or by any one else in your office, as to the destruction of such telegrams, as to the

fact and as to the times. A. I think so ; I have no doubt of it, Q. And as to the dates of the telegrams destroyed, or as to the periods? A. No, sir ; we endeavor to avoid retaining any knowledge that would enable us to identify, in detail, anything.

Q. I didn't mean in detail, but I mean as to the periods for which the telegrams were destroyed? A. I think not ; I think that would be determined by the date of the last preceding destruction.

Q. Is it the custom of your Company to have the telegrams in the Poughkeepsie office forwarded to the general office here in New York at any time? A. I can't answer as to that ; my own knowledge does not extend to each item of detail.

Q. What officer of your company would be able to give us the information on that point? A. Mr. Hunter, I presume.

Q. Have you any knowledge or information as to who was the officer, or employee of your company in charge of the Poughkeepsie office in August, 1869? A. I have not, but it will be easy to ascertain.

Q. Will you please ascertain and send to the Committee the name? A. I will, sir, with great pleasure.

By Mr. CURTIS :

Q. I understand you to refer to the original despatches signed, or purporting to be signed, by the parties sending, that are received at the office from which they are to be sent, when you speak of those which are, at stated times, or at some time, selected and destroyed, you speak of originals only? A. No, sir ; we take the same pains to destroy the copies that we do to destroy the originals.

Q. Then you destroy both originals and copies? A. Yes, sir.

Q. I understand you to say, further, that the office considers itself under such a stringent obligation to the public not to permit outside persons to know the contents of any despatch that is on file in any office, that, unless expressly required to do so by the Committee, you would decline to produce any dispatch? A. Yes, sir.

Q. Do you know of any mode in which any person could have obtained, in the office at Poughkeepsie, or in the office at New York, a copy of any despatches such as are described in the subpoena directed to you by this Committee? Do you know of any way by which a copy could have been obtained? A. Yes, sir.

Q. How? A. An order of the Court to produce the originals would be obeyed as follows: The original would be taken in charge of some person representing the Company, would be presented to the Court and handed to the presiding Judge ; what disposition would be made of them thereafter would be a matter in the discretion of the Court entirely, and copies might of course

be taken. They could not be taken in any other manner without a violation of our rules, unless upon the request of the person sending them, or the person to whom they are addressed. Those two we recognize, always, on proper identification, as being entitled to have copies of messages sent by them, or received by them.

Q. Then, if any one came to the office without presenting an order of the Court, or without acting under the authority of the person sending or receiving the message, they could not be allowed to copy them? A. No, sir.

Q. Have you any reason to suppose that any person ever has been allowed, either in any of the New York offices, or in the Poughkeepsie office, to copy any telegrams passing between James H. Coleman and George G. Barnard? A. I have no reason to suppose that it has ever been done. Will you allow me to make a remark in connection with your first inquiry?

Mr. CURTIS:

Yes, sir.

WITNESS:

A. I have no personal knowledge that such message ever passed.

Q. Do you know anything of any order of the Court having been served upon any one in the New York office, or in the Poughkeepsie office, to produce any such telegrams? A. I do not.

By Mr. STICKNEY;

Q. You keep, don't you, in your office, press copies of telegrams, for a time at least? A. We do in the main office, 145 Broadway, and at some other offices.

Q. Do you know whether it is done at the Poughkeepsie office? A. I cannot answer that question.

Q. Do you know whether or not those press copies of telegrams of the date of the 6th of August, 1869, in the New York office, have been destroyed? A. That is my impression.

Q. Did you direct an examination to be made for such press copies as well as originals? A. I did not specifically. Under the practice of the office, however, my order would cover any press copy, and the return to it would have stated the fact of their existence, if they did exist. Should have done so at all events.

Q. You have been informed, as I understand it, that in a legal proceeding of some kind at Albany, telegrams coming under the description in the subpoena served on you were produced, have you not? A. I have an indistinct recollection of having read, it seems to me it was in one of the *North American Review* articles, what purported to be copies of messages pass-

ing between Poughkeepsie and New York, and it was stated to me orally, recently, by some one in my office, that some order had been made for the production of those messages during the pendency of some proceeding at Albany. That is all the information I have on the subject.

Mr. DAVID DUDLEY FIELD recalled.

By Mr. STICKNEY :

Q. When did you next go to Albany? A. I will give the dates of my presence at Albany during that month. I left New York on the 30th of July in the three o'clock New Haven train. I remained at Stockbridge, Mass., until I received the telegram, as before stated, on Monday, the 9th of August. I remained at Albany until 4:20 P. M. of August the 11th, when I left for New York. I stayed at New York until the steamer St. John left on the evening of the next day, Thursday, in which I returned to Albany.

Q. What was the day of the month? A. That was Thursday, the 12th. I remained at Albany until 4:20. I arrived at Albany on the morning of the 13th, on Friday, and remained there until 4:20 in the afternoon, when I left in the train for West Point to see the Governor. After my interview with the Governor at West Point, I crossed over and took the Hudson River train to Hudson, thence the Boston train to Pittsfield, and thence the Housatonic train to Stockbridge, where I arrived a little before 10 o'clock on the morning of the 14th. I remained in Albany until Thursday, the 19th.

Q. I understand you bring yourself to Stockbridge on the morning of the 14th? A. I remained at Stockbridge until the morning of Thursday, the 19th, when I went to Albany, and at 4.20 in the afternoon went down in the train to New York. I stayed in New York on Friday, the 20th, and on Saturday I left my office, at half-past one o'clock, for Stockbridge, and remained at Stockbridge until Monday afternoon, when, at 3.27, I started for New York. I stayed in New York until Wednesday evening, August 25th, when, at 6 P. M., I left for Albany in the steamer. I stayed in Albany until 4.20 P. M., next day, on which day, Thursday, I went to Stockbridge. I remained at Stockbridge until Monday, the 30th, when I went to Albany in the morning, and returned to Stockbridge in the evening. On the 31st of August I went to Albany again from Stockbridge, to argue the motion to dissolve an injunction granted by Mr Justice Peckham, which injunction was modified by Judge Hogeboom in such a manner as to enable the defendants to prosecute for the books. The details of the order I will give by and by. At 4.30, that afternoon, August 31st, I left for New York.

Q. Give the names of the defendants that you have last mentioned, and in what suit they were defendants? A. The motion,

I believe, was made in the suit brought in the name of the Albany and Susquehanna Railroad Company and William A. Rice against the following defendants: Joseph H. Ramsey, Jeremiah J. Austin, Jacob Leonard, John Westover, Charles Courter, John Cook, Azro Chase, David Wilbur, E. R. Ford, Samuel North, Ira E. Sherman, Alonzo Everts, Eli Perry, Samuel Sloan, Ossian D. Ashley, Samuel C. Thompson, David Groesbeck, Joseph Bush, C. H. Dabney, J. P. Morgan, G. H. Morgan, Jared R. Goodyear, W. H. Burns, John W. Van Valkenburg, Robert H. Pruyn, James Fisk, Jr., Jay Gould, William L. M. Phelps, and Jonathan R. Herrick, in which was an order granted by Judge Peckham, as follows—the most atrocious order I ever saw made; it was made by Judge Peckham.

THE CHAIRMAN :

In reference to an Attorney General's bill, introduced in that Assembly, we have had three or four days of argument before the Judiciary Committee, in which this whole matter has been gone over.

Mr. D. D. FIELD :

I want to read certain parts of it.

THE CHAIRMAN :

Shall we put it in as an Exhibit ?

Mr. D. D. FIELD :

No.

Mr. CURTIS :

I would like to say a word in regard to this matter, because the rights of the accused are involved here. I understand Mr. Field to refer to an injunction order granted by Judge Peckham, restraining the defendants from taking any action in respect to the property, or rights, or interests at all, of the Albany and Susquehanna Company, and that he refers to that for the purpose of explaining why it became necessary to move for a modification of that order, and that he is going on to speak of the modification which they obtained. Now, excepting so far as it may necessarily involve a part of his explanation, the precise form of this order of Judge Peckham may not be material to be read; but if it is understood, it is to be referred to on both sides, and is already in the case before the Committee, then, I suppose, Mr. Field can describe it sufficiently to satisfy his own explanation.

Mr. TILDEN :

It has not yet been put in, but the Committee will receive the whole of it if desired.

Mr. CURTIS :

I should like to have the whole of it read.

THE CHAIRMAN :

Let it be put in evidence as an Exhibit.

WITNESS :

I don't put anything in evidence. This was an order granted by Judge Peckham, and it calls upon the defendants to show cause.

Mr. STICKNEY :

We don't put this in evidence :

WITNESS :

I was asked who were the defendants, on whose behalf the motion was made and in what suit it was. I am now proposing to show the suit in which it was, and the order which we moved against. It is material, because, in the first place, it is a suit brought in the name of the Albany and Susquehanna Railroad Company without authority from any human being. In the next place, it is an injunction granted without any verification at all that is legal. In the third place, it is the most comprehensive order, I apprehend, that any gentleman of the Bar in this State ever before saw, and it was such. I don't want this taken down.

By Mr. STICKNEY :

Q. Give the names of the defendants that you have last mentioned, and in what suits were they defendants.

Mr. HAYES :

I am of the opinion that if this is in answer to Mr. Stickney, it ought to be taken down.

WITNESS :

The order of Judge Peckham was so stringent that we could not move. We got it modified on the 31st of August, and immediately set to work to see if we could not get the books. That is the object of showing that. If the Committee don't want it I don't want it. In that suit Judge Peckham made an order to this effect, that——

Mr. STICKNEY :

Does this Committee direct the witness to read the order ?

The CHAIRMAN :

It is not responsive to the question. The question is answered. Let Mr. Stickney ask a question.

Mr. TILDEN :

You may state such explanation as you may desire to make.

WITNESS :

I wish to state that the order made by Judge Peckham at that time, required the defendants to show cause why they should not be enjoined and restrained from taking any further steps in the action and proceedings mentioned in the annexed complaint, and instituted and prosecuted as therein stated, and such proceeding and action be stayed, and why Fisk and Courter should not be enjoined from acting or attempting to act as the Receivers of the Albany and Susquehanna Railroad Company or any of its property, and why the defendant may not hereafter bring actions or institute proceedings of a like nature, or intended to accomplish the object sought to be obtained by said action, should not be restrained by injunction from advising, instituting or commencing, prosecuting or maintaining or carrying on, or assisting in commencing, prosecuting maintaining, or carrying on any action, suit, petition, or proceeding, having for its object, in whole or in part, the removal or suspension of any of the officers or directors of the corporation plaintiffs, or the procurement of a Receiver of the property of the Company, or any part of it, and from continuing or helping to continue any such action, petition, suit, proceeding, or doing any act towards the commencement or prosecution thereof, and in the meantime, and until the decision itself, ordered that the defendants, Joseph Bush, Daniel Wilber, Azro Chase, John W. Van Valkenberg, Jay Gould, James Fisk, Jr., Charles Courter, Jacob Leonard, Jonathan R. Herrick, Samuel North, their attorneys, servants and agents, and all other persons acting in concert with them, be enjoined and restrained from taking any further steps in the action and proceedings mentioned in the annexed complaint, and instituted and prosecuted as therein stated, and such proceedings and actions be stayed ; and said Fisk and Courter are in the meantime, and until the decision, enjoined from acting or attempting to act as the Receivers of the Albany and Susquehanna Railroad Company, and the defendants, Joseph Bush, David Wilber, Azro Chase, John W. Van Valkenberg, Jay Gould, James Fisk, Jr., Courter, Jacob Leonard, Jonathan R. Herrick and Samuel North, their attorneys, servants and agents, and all other persons acting in concert with them, and such other persons as may bring actions or institute proceedings of a like nature, or intended to accomplish the object sought to be attained by the action of either of them, are restrained from advising, instituting, commencing, maintaining or carrying on, or assist in commencing, prosecuting, maintaining or carrying on any suit, petition, or proceeding, having for its object, in whole or in part, the removal or suspension of any of the Directors of the corporation plaintiffs, or the procurement of a Receiver of the property of the Company,

or any part thereof, and from continuing, or helping to continue, any such action, suit, petition or proceeding, or commencing or doing any act towards the commencement or prosecution thereof. Now, it was, so far as I now recollect, to liberate our defendants from the stress of that order that we made the motion at Albany on the 31st of August.

By Mr. CURTIS :

Q. At the time the injunction order just read by you was served, it was understood by you, was it not, that the books of the Albany and Susquehanna Railroad Company had been removed from the office of the Company, and were then in hiding?

A. It was, and the discussion before Judge Hogeboom was about the opportunity that my clients might have to get those books restored to the office of the Company, and a modification was made which, as we understood, relieved my clients from the operation of the injunction, so as to enable them to take measures for the recovery of the books and their restoration to the office of the Company.

By Mr. STICKNEY :

Q. Is this your motion that came on for hearing on the 31st of August? A. It was, I think. It was a motion made, as far as I remember, by Mr. Parker and myself for the defendants, and resisted by Mr. Hale, Mr. Smith, and perhaps others, on the part of the plaintiffs.

Q. And was it made on an order to show cause granted by Judge Barnard? A. That I am unable to say.

Q. Have you any recollection on that point? A. I really could not tell you.

Q. It was not made under the order to show cause granted by Judge Peckham? A. That I am unable to say.

Q. Wont you refer to the order and see? A. I give only an impression. My impression is that we attended on the 13th of August, and that the argument was adjourned from that day to the 31st, and that it was on that very day.

Q. Do you not remember that you, or your firm, had procured an order to show cause from Judge Barnard on the 11th of August? A. I don't remember.

Q. Ordering that the injunction of Mr. Justice Peckham be held inoperative and void, and ordering the plaintiff to show cause on the 31st, at Albany, why it should not be vacated and set aside? A. It may be so. I could not state without seeing the papers; I could not remember.

Q. Have you that order of Judge Hogeboom, made on the 31st? A. I have looked for it this morning, and I don't find it. I had it; I think I have it now among my papers, but I can't for the present lay my hands upon it.

Q. Then your object, as I understand you, on this hearing on

the 31st of August, was to obtain a modification of that injunction, so that you, or certain of the defendants, could take proceedings to compel the production of those books? A. No, sir.

Q. Did I not understand you to say so? A. No, I have not got to my answer. The argument, if I remember right, was to get rid of the injunction altogether, and the counsel for the plaintiff asked for a postponement, and we resisted it on the ground that the books were kept away in the meantime, and the Judge, upon that resistance, modified the injunction as I have stated.

Q. And you applied for a modification of the injunction so as to make it possible that proceedings should be taken to compel the production of the books? A. That I think was the reason stated to the Judge.

Q. Then you had that object in your mind before the 31st of August? A. Most certainly. The books of the Company had been taken away, by a gross act of robbery, from the office of the Company, and the clients for whom we were acting were seeking by every means to get them restored, and we took just such means as the law allowed to get them. We could do nothing in the meantime, because we were tied up by this injunction, the books being taken away, hidden, and all access to them, and all information of where they were being absolutely refused.

Q. Will you refer to the names of the defendants in that suit, on page 119, and see what ones of those parties were your clients, on whose behalf you wished to take such proceedings?

A. My impression is, we made the motion on behalf of Bush, Wilbner, Chase, Fisk, Courter, Leonard, Herrick, and North.

Q. Had you repeatedly discussed the matter of taking proceedings to compel the production of those books with your son, Dudley Field, before this time? A. Not repeatedly, I think. As to that I cannot say. I had discussed it with him, but how often I cannot say.

Q. For how long previous to the 31st of August had you any discussion with him? A. I could not tell you; I can only say I take it for granted that the moment I discovered the robbery of the books, that I was intent upon getting them back.

Q. Can you not refer to papers in the book that you have in your hand, and find what was the day when you discovered the robbery, as you call it? A. I cannot without spending more time than is convenient now, because it might require me to look through a good many of the documents printed, but I think—

Mr. CURTIS :

They only want you to get at the date when you were informed the books were removed.

WITNESS :

Yes, that is what they want. I don't remember the precise date.

By Mr. STICKNEY :

Q. Refer, if you please, to page 51, as it is paged here, of the book, which you hold in your hand, and see if you cannot state, with some degree of certainty, that on the 24th of August, you appeared before Mr. Justice Barnard on the examination of Joseph H. Ramsey? A. Certainly I did.

Q. By running through three or four pages there, can you not state that you knew then, at least, that the books had been taken? A. I have no doubt I knew it long before that; I have no doubt my clients informed me I could not get the books very early after the books were taken.

Q. The modification of the injunction you speak of, that you obtained on the 31st, allowed the defendants to take such proceedings? A. I believe it did.

Q. Was the Albany and Susquehanna R. R. Co. one of the defendants? A. You know, as well as I, by having seen the title of the cause as I have given it.

Q. Will you refer to it and see? A. The Albany and Susquehanna R. R. Co. were not.

Q. They were not enjoined from taking any proceedings? A. That is a matter of argument.

Q. Were they? A. You have the injunction, and you may judge for yourself.

Q. We want to know? A. I shall not give you any information; you can read as well as I can read.

Q. The plaintiffs had not been enjoined, as far as you know, in that action. A. The only injunction that I know of in that action is the one that I have referred to.

Q. Enjoining the defendants? A. I don't say anything about it.

Q. Is that so? A. That is the only injunction that I know of.

Q. Were any proceedings taken by any of those defendants to procure or compel the production of those books? A. Which defendants do you mean?

Q. The defendants named in that injunction order? A. Certainly.

Q. Will you state the name of any suit which was brought in the names of those defendants, or either of those defendants, for that purpose? A. A suit could not be brought in their individual names, but they could act as officers of the Company, and they did act; that is to say, Chase, Wilbur, and Leonard, being a majority of the Executive Committee of the Company, authorized and directed the suit to be brought in the name of the Company to arrest certain persons for carrying away the books.

Q. Will you state the name of any suit which was brought in the names of these defendants, or either of these defendants, for that purpose? What suit was brought in the names of those defendants, or either of them, to compel the production of those

books? A. I will modify the beginning of the above answer by saying no suit was brought, to my knowledge, in the names of those defendants individually.

The CHAIRMAN :

Strike out the words in the above answer: "to arrest certain persons for carrying away the books."

Q. Why did you not bring an action to compel the production of those books earlier than the action was brought? A. Because they were enjoined from doing it, or at least we poor lawyers supposed it was so.

Q. Will you please point or refer to any clause, in your opinion, which did enjoin them from taking those proceedings?

A. No, I will not. I will not oblige you by giving you my opinion on any matter of law.

Q. Can you refer to the clause which induced you, poor lawyers to think those defendants were enjoined from bringing any such proceeding? A. I have no answer to make to any such question so impertinent as that.

Q. This modification was obtained on the 31st day of August, was it not? A. I will not answer that question again. The repetition is impertinent.

Q. What was the reason for the delay in bringing the suit after that time? A. The suit was brought, according to my opinion and belief, at the earliest possible moment after that, for the reasons which I will now proceed to state. On the very day on which the modification was obtained, two of the defendants, namely, Messrs. Herrick and Leonard, went to Pittsfield, Mass., to get other books, supposing that they were there concealed in the American House. They there employed Mr. Dawes, a lawyer and a member of Congress, to assist them in obtaining them. Baffled in that endeavor, they returned to Albany and got a meeting of the Executive Committee as soon as possible, which Executive Committee met at Albany on the 3d of September, and passed resolutions authorizing a suit to be brought, which resolutions were sent from Albany, on the 3d, to Field & Shearman, at New York, where they arrived on the 4th of September, which was Saturday. As soon as possible after the arrival, the papers were prepared for the commencement of the suit, and for the obtaining of an order of arrest. They could not be obtained until Monday, and they were dispatched to Albany by the very first train after they were obtained on Monday. These facts I give from information as well as my personal knowledge—most of them from information. I have no doubt, whatever, that the utmost diligence was used to bring the suit, and to arrest these defendants at the very first moment after these officers were released from the operation of Judge Peckham's injunction.

Q. Have you any knowledge or information as to what pa-

pers were prepared in that arrest suit, after your firm received that authorization on the 4th of September? A. Yes.

Q. The papers now shown you are the original papers on which the order of arrest was obtained. Have you any knowledge or information as to which of those papers were prepared on or after September 4th? A. I don't know that I have any particular information, but from looking at the papers, I have no doubt that the summons and complaint, and affidavit annexed—

Q. Which affidavit—Dudley Field's affidavit? A. Yes, Dudley Field's affidavit and the order of arrest were prepared after the arrival of the resolutions of the Executive Committee.

Q. Then will you produce, now, the letter from Hamilton Harris, dated on or about the 3d of September, directed to your firm, which accompanied this resolution, authorizing the bringing of that suit?

MR. CURTIS :

This inquiry, as I take it, is whether a *prima facie* case shall be found to exist for the reporting of these charges against Judge Barnard to the Legislature, and a recommendation of an impeachment or some other proceeding.

MR. D. D. FIELD :

Will you allow me to interrupt you?

MR. CURTIS :

Yes, sir.

MR. D. D. FIELD :

I would rather put this letter in evidence, if you have no objection.

MR. CURTIS :

I don't intend to raise an objection; I only want to ask an intimation from the Committee, as to what collateral inquiries this matter is to extend into. What bearing can a letter written by one of his associates to Mr. Field, in relation to any part of this business, have upon this charge against Judge Barnard?

THE CHAIRMAN :

I am entirely unable to say.

MR. CURTIS :

I don't want to exclude anything on the part of Judge Barnard, but only to see how far we are to go into these collateral inquiries. Everything in existence, so far as Judge Barnard is concerned, I desire the Committee to know. But, at the same time, it may be a matter of interest and convenience to the Committee to know how far they are to go into these collateral inquiries.

Mr. STICKNEY :

Does the Committee wish any information as to the purpose in offering this testimony ?

M. VEDDER :

There has been no objection to it, and Mr. Field is willing to produce it.

WITNESS :

I produce the letter, which is as follows :

“ OFFICE OF REYNOLDS & HARRIS, }
 “ *Counsellors at Law,* }
 “ ALBANY, Sept. 3d, 1869. }

“ MESSRS. FIELD & SHEARMAN.

“ GENTLEMEN :—Enclosed, I send you the resolution of the
 “ Executive Committee of the Albany and Susquehanna Rail-
 “ road Company, directing proceedings to be instituted for the
 “ recovery of the books of the Company. A meeting of the Fi-
 “ nance Committee could not be had, it being impossible to get a
 “ majority of the members of the Committee together, Courter
 “ being out West, and will not return until Monday next.

“ Yours, &c.,

HAMILTON HARRIS, M. D. C.

“ P. S.—No notice of meeting could be served on Ramsey and
 “ Rice, as they were not to be found.

“ H. H.,
 “ M. D. C.”

I see by an endorsement on the letter, which is in my son's handwriting, that he must have received it on September 4, 1869, and, as I have no recollection of any such letter being brought to my notice before I left my office on that day for Stockbridge, I am confident it arrived at the office after half-past one o'clock on Saturday, the 4th of August.

By Mr. HAYES :

Q. What is “ M. D. C. ?” A. I suppose it means Martin D. Conway, Mr. Harris' clerk.

By Mr. STICKNEY :

Q. When did you first see that letter ? A. I could not say.

Q. How near the 4th of September ? A. I could not say at all. I don't remember anything about it, when I saw it first.

Q. You have no recollection whatever ? A. I have said so ; “ remember” is recollection.

Q. How long has it been in your possession ? A. About a year ago, a set of ignorant and malevolent and conceited per-

sons attacked me. For my vindication, I thought it proper to hunt up the original papers in my office, and put them together and keep them. I did so, and took them then into my possession, and have had them, I believe, ever since.

Q. Who are the persons to whom you refer as a set of ignorant and malevolent and conceited persons as having attacked you? A. Francis C. Barlow, Albert Stickney —

The CHAIRMAN :

I don't see that this has the least thing to do with the charges against Judge Barnard.

Mr. PARSONS :

It seems to me the fault is in the statement being made.

The CHAIRMAN :

I don't think it is necessary to follow it up.

Mr. PARSONS :

We desire the answer completed, if the Committee will permit.

The CHAIRMAN :

It seems to me the question should be struck out.

By Mr. STICKNEY :

Q. Will you produce the resolution itself? A. I produce it, and read it as follows :

“ At a meeting of the Executive Committee of the Board of
“ Directors of the Albany and Susquehanna Railroad Company,
“ held at the city of Albany on the 3d day of September, 1869.
“ Present—Azro Chase, David Wilbur and Jacob Leonard.

“ *Whereas*, certain books of this Company, two stock ledgers,
“ two transfer books, book of stock certificates, cash book, book
“ of minutes, and two subscription books, have been abstracted
“ from the office of this Company by Joseph H. Ramsey, Wil-
“ liam M. L. Phelps, Robert H. Pruyn and Henry Smith, acting
“ in concert with others, and it is important that such books
“ should be recovered and restored to the office of the Company ;
“ therefore,

“ *Resolved*, That Field & Shearman be employed as counsel,
“ to take all legal measures for the recovery and restoration of
“ the said books, and for the arrest and punishment of the per-
“ sons abstracting them, with liberty to employ assistant coun-
“ sel as they may find it expedient ; and, further

“ *Resolved*, That the books, as soon as they are recovered, be
“ deposited in the office of this Company, to be there kept with
“ the other books of the Company.”

(Endorsed)—“ The within resolution was this day passed at a

“ meeting of the Executive Committee, all being present except Messrs. Ramsey and Rice.

“ Dated September 3, 1869.

“ AZRO CHASE.

“ DAVID WILBUR.

“ JACOB LEONARD.”

Q. Do you know in whose handwriting the body of that resolution is? A. I am not sure, but my impression is that it is in the handwriting of Mr. Conway.

Q. Clerk of Hamilton Harris? A. Clerk of Hamilton Harris.

Q. Who was counsel throughout this litigation for Jay Gould?

A. To what extent he was counsel for Jay Gould I am not really able to say. He was counsel, as I understood from himself and understood at the time from Mr. Jay Gould, in some matters, whether in all, I don't know.

Q. He had been acting with you, I think you have testified, all through the greater part of this? A. I have not testified he was acting with me throughout; I have testified he was acting with me on the 9th day of August, when I arrived in Albany.

Q. Was he about this time—the 3d 4th, 5th and 6th September? A. My impression is I was in Stockbridge at the time. On the 7th of September, the day of the election, I believe he was.

Q. The amount of bail fixed by this order of arrest granted by Judge Barnard was \$25,000. In your opinion was that an extravagant or reasonable amount of bail in such a case? A. In my opinion it was much less than ought to be ordered under the circumstances. The act was an atrocious one, such as is rarely paralleled in this country, and I think every one concerned in it should not only be arrested and held to bail in a very large amount, but punished criminally. Since what we have learned lately in regard to bail where we know some persons have been held to bail in a million of dollars here, and that the claimant in the Tichborne estate was held to bail in £50,000, and, further, when we remember that Judge E. Darwin Smith held so rich a man as Daniel Drew to bail, I think in \$250,000 or \$300,000, it is my opinion that Mr. Justice Barnard ought to have held those men to bail in the \$50,000 demanded. I hope that is an answer to the question.

Q. Have you any knowledge or information whether Mr. Justice Barnard, in the case of William M. Tweed fixed the bail at \$5,000 when he was charged with having stolen six million? A. It is an impertinent inquiry.

[The Committee directed that the witness should answer the question.]

WITNESS :

The indictment, if I remember its contents, charged Mr. Tweed

with an offence relating to specific sums of money, and not of large amounts, but I will not undertake to state what were the contents of the indictment. The bail was fixed by Judge Barnard at \$5,000, after an argument by Mr. Charles O'Connor, in which he stated that if any bail was admitted it should be small bail, and stated, I think, that he had never known over \$20,000 in any criminal case, except one, and that was the case of Jefferson Davis, and that that would not have been one-fifth of that amount, but that bail was proffered to that amount.

Q. This resolution that you have produced reads, "Resolved, That Field & Shearman be employed to take all legal measures for the recovery and restoration of said books." What proceeding did Messrs. Field & Shearman take for the recovery or restoration of those books? A. They took the proceedings which have been referred to already by commencing a suit to recover damages for the abstraction and holding the parties guilty, as was supposed, to bail, as has been already explained.

Q. Did they ask for a judgment in that suit for the return or the recovery of the books? A. The complaint has been already proved and shows itself, but if by the question it is meant to insinuate that any such remedy could be had, I wish some counsel who knows something about the matter could tell us whether such a thing was possible. To the poor lawyers who were concerned in this case nothing appeared possible for them to do, since the books were concealed beyond any possibility of finding out where they were, that would procure so speedy a restoration as the process adopted.

Q. Were any proceedings taken for the recovery of the books? A. I have already answered what proceedings were taken.

Q. No others than those you have mentioned? A. None that I know of; no suit was brought except the suit mentioned in Massachusetts, but that was before the resolution was sent to Field & Shearman.

Q. For what particular purpose was the recovery of the books desired? A. The recovery of the books was desired so that the stockholders might know who were the real stockholders, and how much false and fictitious stock had been issued.

Q. For the purpose of an election in this instance? A. It was necessary for the purpose of an election, for the purpose of determining their rights in respect to their proportion in the property of the Company, for all purposes for which any stockholder desires to know who are the stockholders in a Company in which he is a shareholder.

Q. Did you know, on the 6th of September, that Henry Smith was the counsel of Ramsey and of the Directors in that Company who were friendly to him? A. I knew Henry Smith had acted as counsel for them; that is all I knew on the subject.

Q. Did you know that Mr. Phelps was the Secretary of that Company? A. I knew he had been.

Q. Did you know Mr. Ramsey was the President? A. I knew he had been.

Q. Did you know there was a contest for the Directorship of that Company to be decided at the election at 12 o'clock on the 7th of September, 1869? A. Yes, sir; I knew there was an election to take place at 12 o'clock.

Q. Can you explain how, if Ramsey, Smith and Phelps were arrested at the hour of election, the restoration of the books would be forwarded or aided thereby? A. I can explain how, in my judgment, the arrest of those men, in the way in which it was, was the mode and the only mode for getting the restoration of the books to the office of the Company. The books, as was understood by my clients, according to my information, had been taken in the night time of the 5th of August. They had been carried from place to place, concealed, and they were not only concealed, but the knowledge of their contents withheld from the persons interested in knowing; they were in the possession or control of the persons who were arrested. It was most important to the stockholders of the Company that those books should be restored, as they ought never to have been taken away, and should have been in the office from the 5th of August. If any process of the law could get them, it was arresting them. That is my answer.

Q. Did they get them? A. That is more than I can say, how far the suit had any effect upon the defendants; what I was afterwards informed was, that the books had been taken, as I have stated, and carried from place to place, hidden in a tomb in the Albany graveyard, visited and seen, and visited only by Ramsey, Smith, and their confederates, until the evening before the election, the election being on the 7th. Monday evening, the 6th, they were brought back secretly at night, taken to the rear of the office, drawn up by a rope in a bucket by this man Phelps, and by Wilber F. Ramsey, a son of Joseph H. Ramsey, and secretly placed in the safe.

Q. What did you do after you knew these defendants had been arrested? A. That was before they were arrested. I don't know anything about it; I had no knowledge of it.

Q. They were arrested at 12 o'clock, on Tuesday, the 7th, were they not? A. They were arrested on the 7th; I don't know what hour they were arrested; I didn't see them arrested.

Q. You say they were returned the night before? A. As I was subsequently informed, they were taken up and placed secretly in the safe, and their restoration was not known until afterwards, except by a very few persons.

Q. Did you consider it of any importance that these books should be restored before the election? A. Most certainly.

Q. Was that your main object in bringing the suit? A. I

can't say that it was; it was to get the books back. That was the object in bringing the suit.

Q. What did you do after those defendants were arrested, to compel the books to be brought back? A. The examining counsel has already been informed that the books were brought back.

Q. But you say you didn't know it? A. Until afterwards.

Q. You didn't know at that time that the books had been brought back? A. No. When?

Q. When those defendants were arrested? A. No, I don't think I did.

Q. You desired them to be brought back, as I understand it. What did you do after they were arrested to compel them to be brought back? A. We went on with the suit as fast as we could.

Q. What did you do with it? A. Got an answer, and noticed the case for trial.

Q. Did getting an answer in that suit help the production or restoration of the books? A. That question is so impertinent and stupid, that I decline to answer. Nobody, but a man who didn't understand what the object of a suit was, would put such a question.

Q. You had no knowledge of any intention, on the part of any one, to have these defendants arrested just at the time of election, had you? A. I had no knowledge, belief, or suspicion. I don't believe any human being intended it. I don't believe it entered the mind of any one that it should be done. I believe the whole idea is the idea of a wicked imagination.

Q. Willfully false, and willfully misrepresented? A. Yes, I believe those who say it now are either knaves or fools. I believe, if they assert it without reading the facts, they are knaves. If they have read the evidence, and assert it, they are fools.

Q. Did you see Mr. Ramsey in the charge of the Sheriff, after he had been arrested in the Albany and Susquehanna Railroad Company building? A. I don't remember that I did.

Q. Did you not see Mr. Ramsay in the President's room in the Sheriff's company? A. I don't remember that I did. I remember seeing Mr. Ramsey in the President's room, and his saying to me, or mentioning in some way, that a suit had been commenced, or that he had been arrested, but my recollection on the subject is very indistinct, and I cannot say where it was, or precisely when it was.

Q. Did you not come to the door of the room where Mr. Ramsey was under arrest in the custody of the Sheriff, and say to him: "How are you now, Ramsey?" or "How is it now, Ramsey?" or words to that effect? A. I have no recollection of saying anything of the sort. I don't believe I ever said it. I believe that those who assert it, assert a direct falsehood.

Q. Can you say positively that you did not use words of that

character? A. I can only say, positively, as far as that I don't remember any such thing, and I don't believe I did.

Q. But you have no recollection of it? A. Certainly. I have no recollection of saying it. It was most improbable that I should have said it, and I don't believe I said it.

Q. Have you stated all the proceedings that were taken to compel the restoration and production of those books as far as you have any knowledge? A. I can't pretend to say what steps were taken in the case.

Q. As far as you have any knowledge or information? A. I can't state that even. I can only state at this moment what I recollect.

Q. As far as you recollect? A. What I recollect of the case is this: That the suit was commenced on the 7th of September; that immediately afterwards, or within a very short time, the People suit was brought, which enjoined all pending actions, and nothing further could be done until the determination of that case; that afterwards an answer was put in, and a motion made to change the place of trial, which was argued, and the place of trial was changed to the county of Schenectady, and then, that in May, 1870, a motion was made to discontinue the suit, which motion was opposed by me on a variety of affidavits, and was argued for the motion by Mr. Hale and Mr. Smith, and granted in a modified form. That was, as far as I remember, the end of the suit. What I testify, and have testified heretofore, has been from information in part, and from knowledge in part, and I may not have distinguished altogether what I know from personal knowledge and what I know from information, but as you tell me you take hearsay and all, I suppose it is within the rule. If it was strict examination in regard to personal knowledge, I should be more careful as to my precise answers.

Q. I understand you to state that the motion for the discontinuance of that action was made on the part of of the defendant? A. No; that was struck out. It was made, I said. I said I would say on whose behalf it was made afterwards.

Q. On behalf of whom was it made? A. I have the motion papers here, and they will enable me to tell you. I now produce the motion papers in that case, served on Field & Shearman, and they contain, first, an affidavit of William A. Rice, and then annexed is a copy of the resolution of the Executive Committee, which has already been read, and a list of various suits, and the order of Judge Hogeboom, which I had not found, and which I now have got, and which I will now read. That is a motion made in the cause of *The Albany & Susquehanna R. R. Co. vs. Samuel North, Jonathan R. Herrick, Jacob Leonard, David Wilber* and another.

“The motion here in coming on at this Term, ordered that the

same stand over until, and be heard at, the Special term of this Court, to be held at the City Hall in the city of Albany, on the last Tuesday of September, 1869, the injunction herein not to be construed as restraining the parties or any other person from taking any proper proceedings for procuring the discovery and production of the books of the Company and their deposit in some proper place." I observe the title of this case is *The Albany and Susquehanna R. R. Co. vs. North, Herrick, Leonard, Wilber* and another. That does not appear to be the case which I mentioned as the one in which the order was made. I think the motion was made in both cases, and that the same order was made in both. I may have mistaken the title of the case, but I think this order was made in both cases. Now, I will show you how the motion is. "You will take notice that this Court will be moved," and so and so," "for an "order that the above entitled action be discontinued, and dismissed, and that the costs of the defendants and the Company "named or plaintiff therein be paid by Field & Shearman, "Esqs., or by Azro Chase, David Wilbur, or Jacob Leonard, "personally, or for such other and further order as the Court "may deem proper, with costs," and so on; signed "Hand, Hale & Swartz, attorneys for the Albany & Susquehanna R. R. Co.," named as plaintiffs in said action, directed to Field & Shearman, named in the summons and complaint as plaintiff's attorneys herein, and Samuel Bancroft and N. C. Moak, attorneys for the defendants in the action, and is made, as the papers show. It having been insinuated—

Q. By whom? A.—or stated that this suit was dismissed upon the ground that it was improperly brought, I read from a part of the affidavit to show the grounds on which it was dismissed. One was that the suit had been brought without authority, and another was that the new Directors, that is, the Ramsey Board, when they got into the Board, passed a resolution that it might be discontinued, and this is it: "That at a "meeting of the Board of Directors of said Company, held in "the city of Albany on the 14th of April, 1870, the following "preamble and resolutions were unanimously adopted, as appears from the books of minutes of said Company, and as deponent verily believes. An action having heretofore been instituted in the Supreme Court, wherein the Albany & Susquehanna R. R. Co. is named as plaintiff, and Joseph H. Ramsey, Robert H. Pruyn, Henry Smith and William M. L. Phelps are named as defendants, and Messrs. Field & Shearman, of New York, as assuming to act as attorneys for the Company, and an order of arrest having been granted in such action, and the said action having been brought without authority and in the interest of the enemies of the Company, and its further prosecution being inconsistent with the interest of the Company and its stockholders;

Resolved, That Hand, Hale & Swartz, of Albany, be and “they are hereby authorised and required, in behalf of and in “the name of the Company to take such steps as may, in their “judgment, be proper to procure a discontinuance of such action “and to charge the parties who commenced the same without “lawful authority with the costs thereof, and otherwise to inter- “fere and protect the rights and interest of the Company in the premises.” That motion was opposed on the following affidavit, before Judge Ingalls. It appears, by a certificate that I have from the clerk of Schenectady county, that the following affidavits are on file, and they were used, I believe, on that motion. The affidavit of Edward Ensign, and papers annexed; Thomas G. Shearman, Harris Parr, Sheriff; T. D. Cottman, David Wilbur, Jonathan R. Herrick, Hamilton Harris, William J. Hadley, William H. Morgan, M. D. Conway, Azro Chase and Jacob Leonard, and upon that the Court made this order.

Mr. PARSONS:

The Committee will understand that we consider it entirely irrelevant to our inquiry.

WITNESS:

It is directly relevant to the inquiry. The inquiries have been all directed to showing that this suit was improperly brought, and that it was dismissed because it was improperly brought, and I am answering it. Here is the order before Judge Ingalls: “Ordered that the above entitled action be and the same is hereby discontinued, without costs to either party.”

By Mr. CURTIS:

Q. I wish to ask whether, before making that order, Judge Ingalls didn't ask whether the books had been restored to the Company, and whether the case had not answered its main purpose? A. That is my recollection.

Q. What response was made by the plaintiff's counsel? A. According to my recollection—I don't presume to give the precise language used by anybody, but, as I remember it, it was this: After the paper had been read, and after its argument, Judge Ingalls said: “What is the object of this motion, gentlemen? The object of the suit has been accomplished, has it not? The papers are back.” The answer was: “Yes, they are.” “Then it is a mere question of costs?” Then Mr. Hale and Mr. Smith fought very hard to have Field & Shearman and those three gentlemen pay the costs, on the ground of saying that it was improperly brought, and then the Court cut them short by saying they need not pay any costs. I don't mean to say that those are the words, but that is the substance. He decided they should be dismissed without costs.

Q. How long have you been in practice in this city? A. I have been in practice here since 1828, I think.

Q. Upwards of forty years? A. Upwards of forty.

Q. When did the Code take effect? A. The 4th of July, 1848.

Q. The practice of the State before that was the common law practice, and the Equity practice, separated from each other? A. Yes, sir.

Q. You have read the charges on which this investigation proceeds? A. I have. I have read them very hastily.

The CHAIRMAN :

I would like to inquire where you read them.

WITNESS :

I read them here ; I saw them a little while ago on Mr. Curtis's table.

By Mr. CURTIS :

Q. Do you understand that it is charged that Judge Barnard entered into a conspiracy with Fisk and Gould, and their counsel, or attorneys, to do certain unlawful acts? You understand that to be the charge in general? A. I do.

Mr. STICKNEY :

I think you are mistaken in inserting the words "counsel and attorneys." A. I think you will not find those words there ; I may be wrong.

Q. I want your judgment, as a lawyer, to be given to this Committee as to whether any such offence as that, under the practice of the Code, wouldn't be an exceedingly difficult and almost impossible thing to take place. I want your judgment, as a lawyer, on the bearings of the provisions of the Code on the liability or exposure to the happening of such an offence as that, and when I say "the provisions of the Code," I refer to those requirements preceding the issue of the process which the Code demands in comparison with the old common law practice? A. I really don't understand your question.

Mr. CURTIS :

I will explain myself. I propose to ask Mr. Field to compare the old common law practice in respect to the issue of process, the modes in which they were issued, with the practice under the Code, and then to give us his judgment, as a lawyer experienced in practice under both systems, whether the law of the land now is not such that it would render such an offence as is charged here in these charges exceedingly difficult, and almost impossible to be performed?

Mr. VAN COTT :

I suppose the question is, whether the offence has been committed?

Mr. CURTIS :

I have a right to approach it in any way I see fit. I have a right to show it is an exceedingly improbable offence to be committed, in the first place ; and then I mean to go into a further inquiry as to whether it has been.

Mr. STICKNEY :

The Committee will understand that we make no objection to that question.

WITNESS :

I am, as you may suppose, a believer and strong partisan of the Code, which, though left imperfect by the Legislature, as it has been, and misconstrued repeatedly, I believe did effect a very great beneficial change in the practice, and renders the perpetration of an offence such as you have mentioned far more difficult than it would have been under the old system.

By Mr. CURTIS :

Q. Will you now explain to the Committee what was the original connection of Messrs. Fisk & Gould with the affairs of the Albany & Susquehanna R. R. Co. ; how it came about and to what it extended. A. I will do so, promising that what I state, as I have already mentioned, is upon information as well as upon personal knowledge, part one and part the other, and without speaking too distinctly.

Q. Information derived how ? A. Information derived from my questions.

Q. From having been consulted in the business at first ? A. Yes, sir ; consulted in the business from the time I went to Albany. The litigation arose, as I understand it, from division in the Board of Directors of the Albany & Susquehanna R. R. Co., reaching back a very considerable time. The Board was, at the time, six to eight ; five directors with Mr. Ramsey on one side, and eight on the other, before Fisk and Gould had anything to do with it. These eight charged Mr. Ramsey with gross misconduct in his office as President. They endeavored to effect a change at the election, which was to take place on the 7th of September. With this view, they first got the representatives of the towns to join them in their efforts to effect the change, and finally applied to Fisk & Gould to help them purchase, or to purchase this stock in the market, so as to get a control of the stock of the Company. When the litigation broke out, it was on the 2d of August or the 3d of July, 1869. The Church party—I will call them the Church party, although Mr. Church was not in it, as I know, but we all called it so afterwards, because he was the President chosen by that Board—the Church party had a clear majority of all the lawful stock of the Company. The Ramsey party entered into a wicked and fraudulent conspiracy to deprive them of that lawful control which they

would have by this preponderance of stock, by two measures, one of which was to prevent the transfer to Fisk & Gould of the stock which they bought, and to prevent the town stock from voting in favor of the Church party, and the other was by the manufacture of fraudulent stock. The litigation began first by a suit in the interest of the Ramsey party, in the name of the Town of Oneonta, to prevent the Commissioners of the town from transferring the stock which they had agreed to sell and transfer, and an injunction was granted in that by Mr. Justice Parker, I think, of Owego, which was shortly afterwards dissolved. Then there were suits on both sides, Ramsey and his party seeking to prevent the transfer of stock; the other side seeking to get the transfer. The books were to be closed at the end of that week, on the 7th of August, and the whole of this litigation arose, that is, this part of it was carried on, between Monday and Saturday the 7th, during which time various suits were brought *pro* and *con*; one of the suits being that which was brought in the name of the Company and Rice, which I have already mentioned, which was a general injunction against everything, and tied up the hands of the Church party completely. The Ramsey party, on the night of the 5th of August, got together at Ramsey's house, and there subscribed, in an old subscription book, for 19,500 shares of stock, making up the whole capital stock of the Company not then outstanding, 9,500 shares of which were taken in the names of Ramsey and his friends, and 5,000 shares by Ramsey, in the name of Dabney, Morgan & Co., and 5,000 shares in the name of Groesbeck. 9,500 shares were subscribed for in this proportion: Joseph H. Ramsey, 1,500 shares; Jared Goodyear, 1,500 shares; John Westover, 1,000 shares; John Eddy, 1,000 shares; Robert H. Pruyn, 1,000 shares; William A. Rice, 500 shares; John Cook, 500 shares; E. R. Ford, 500 shares; Harvey Hunt, 500 shares; and on the next day, James Hendrick, 1,000 shares, and Minard Harder, 500 shares—making altogether 9,500 shares. Not one cent was paid at the time of the subscription, and not one of the subscribers intended to pay anything. The whole scheme was to get the stock, for the purpose of voting at that election, but the law required ten per cent. to be paid. In order to make out the ten per cent., Ramsey went to the treasury of the Company, to its office, and took out bodily \$150,000 of bonds belonging to the Company, and sent them to New York, with this letter:

[*"Confidential."*]

"THE ALBANY AND SUSQUEHANNA RAILROAD CO.,
"President's Office,
 "ALBANY, August 4, 1869.

"DAVID GROESBECK, ESQ.,

"*My Dear Sir*: The bearer, W. F. Ramsey, my son, will deliver you the one hundred and fifty thousand dollars A. & S.

“ R. R. bonds, upon which I desire to make a loan for six months of one hundred thousand dollars.

“ Inclosed you will receive note for the amount, and will execute the other papers you referred to when in New York. The subscription is all O. K., \$1,000,000, by first-class men in the city and country.

“ There is a very strong feeling, along the line of the road, against Gould & Co.'s having the road under their control.

“ Very truly, yours,

“ J. H. RAMSEY.’

“ P. S.--My son will pay the stamps required, or I will the first time I am at New York. Please inform him when the matter is closed, that he can telegraph all is right.”

On the very night when that took place, the books mentioned in this resolution, that is to say, the two stock ledgers, the two transfer books, the book of stock certificates, cash book, book of minutes, and two subscription books, were abstracted from the office of the Company, and they remained concealed, as I have already explained, until they were returned secretly on the night of the 6th of September, the day before the election. Where they were in the meantime, and what was known about them, and the information we could get, I will now show you, and show you by that the grounds upon which the order of arrest was made. Ramsey was sworn August 24. Here is an extract from his testimony :

“ The amount of stock in my name, I think, is about 1,800 shares ; between 1,700 and 1,800 shares in my name. I cannot tell the precise number. Q. Is there any held by any one in trust for you ? A. No, sir. Q. You have no interest in any except 1,700 or 1,800 shares ? A. No, sir. Q. Or your family ? A. There are ten shares in the name of a deceased son. I am executor of his estate. Q. Otherwise than that, have you or your family any interest in the stock of the Company ? A. No, sir. Q. How much of partly paid stock is there ? A. Between 9,000 and 10,000 shares. Q. Who holds that ? A. Several persons. Q. Give the names ? A. Mr. John Westover, Mr. John Cooke, Mr. E. R. Ford and Jared Goodyear ; all these parties own full paid and partly paid stock. Q. Are these four persons the only persons that hold partly paid stock ? A. No. There are some others. I have some. Q. Who else ? A. I do not think of anyone else now. Nineteen days after this transaction he didn't remember anybody but those. Q. When were these subscriptions made ? A. I think some time in July. Q. Have any subscriptions been made since July ? A. No ; I believe not. Q. When did you make your last subscription ? A. In July last. Q. How much did you then subscribe for ? A. I think about 1,000 shares or 15,000.”

And this is the man who says he was wrongfully arrested for that act, and for doing what I now state. Respecting the books he testified :

“ Q. Where do you think they are? A. I do not know. Q. Have you no information or belief about it? A. I think they are in Albany, some place. Q. You mean in the city of Albany? A. Yes, sir. Q. In what street in the city of Albany do you think they are? A. I have no idea. Q. Have you any idea who has charge of these books in Albany? A. I have not.”

And that is the man that complains because he was arrested for taking those books.

Now, next, I read an extract from the affidavit of William L. Phelps :

“ Q. Where are the stock ledgers, transfer book, scrip book, cash book and minute book of the Company? A. I don't know where they are. Q. What did you do with them? A. Haven't done anything with them. Q. Have you seen them since the 6th instant? A. Yes, sir. Q. Where? A. At Mr. Henry Smith's office. Q. Who took those books from the office of the Company? A. They were taken by several persons. Q. Give their names, the books which they took, and the times when they took them? A. Samuel Hand took some on the 5th instant, but what books I don't know; Rufus W. Peckham took some. I take this back. I don't know who took them. They were there. I didn't see any one take them. Q. Who took away the minute book from the office of the Company? A. I can't remember. I gave it to one of the gentlemen who were here, which I don't know. Q. Did you give the other books also? A. I didn't give any of the other books.”

“ Q. What entries have been made in the transfer books and stock ledgers since they were removed from the office of the Company, and who made them? A. I can't remember particular entries. We were seeking to find out the 9,500 shares. I didn't know any—this Secretary didn't know of any. I can't remember particular entries. They were made by me and Mr. Van Alstyne, my assistant, and some time this week, Monday or Tuesday, I guess. Q. What were the entries? State as much of them as you can? A. I can't remember any of them. Q. What did they relate to? A. They related to transfers. Q. By whom, to whom, and for what? A. From different stockholders to different stockholders of Susquehanna stock. Q. Has any stock been transferred on the books since they were removed from the office of the Company? A. Yes, sir. Q. From whom, and to whom, and what amount? A. I don't remember any person who transferred, or any person to whom transferred.”

“Q. Since the books were removed, have you not repeatedly refused to give any information to the Directors of the Company respecting the entries in the books made since they were removed? A. Yes, sir; when I refused I couldn't tell anything about the contents. Q. Have you not been asked whether new stock had been issued, and refused to answer? A. No, sir; I didn't refuse to answer; I declined to answer.”

Then another of these affidavits.

Q. Since your examination in the case of Bush against the Albany and Susquehanna Railroad Company, and others, have you seen the books of the Company mentioned in that examination, or any of them? A. No, sir. Q. Have you given any directions in respect to them, or any of them, or any entries made or to be made therein? A. No, sir. Q. Have you any knowledge, information, or suspicion where the said books, or any of them, now are, or have been since then? A. No, sir. Q. Have you any knowledge, information, or suspicion in respect to the present custody or control of these books, or any of them? A. No, sir; I have not. Q. Has any copy been taken of these books or any part thereof, since the 7th of August last? A. Yes, sir; there was a copy taken of the books.”

Q. After Messrs. Fisk & Gould agreed to advance funds to enable a certain party of the stockholders and directors of that Company to purchase town stock, and to purchase other stock in the market, they continued, did they, their connection with this matter up to the time of the election? A. I believe so, and long after.

Q. And it was in consequence of their being applied to to furnish funds for that purpose, that you became connected with these suits as counsel? A. So I believe. Up to the 9th of August I had no connection whatever with them. I was then telegraphed for by Mr. Fisk.

Q. When I say “you,” I speak of Field & Shearman? A. Yes, sir; I have no doubt of that.

Q. Although you didn't personally participate in the conducting of all these cases, you are familiar, I suppose, with every order that Judge Barnard signed in relation to that Albany and Susquehanna litigation? A. I believe I am.

Q. You are familiar and well acquainted with all the papers on which each order was founded? A. I believe so.

Q. Do you know of any one single order made by Judge Barnard in that litigation, that was not founded on papers that were right in point of form, and sufficient in point of substance, to call for the making of the order? A. None whatever; I believe Judge Barnard could not honestly, as a Judge, have refused to give any order he gave in the whole course of the litigation. The only thing I complain of is, he didn't go far enough. He didn't pun-

ish Ramsey when he had him before him on contempt, which he should have done, and Van Valkenberg.

Q. Do you know of any conspiracy, combination, or concert of any kind between Judge Barnard and any of the counsel or attorneys associated with you, or with yourself, or with Messrs. Fisk and Gould, to do anything in that matter? A. I know of none; I don't believe there were any; I think the suggestion of it is the emanation of a wicked imagination.

Q. Do you know of any previous conference on the part of any of the counsel or attorneys, who procured those orders, apart from the written papers and affidavits on which they were procured? A. I do not.

Q. Is there any fact within your knowledge which would lead you to believe, or to suspect, that anybody had ever had any previous concert with him for the purpose of bringing about the signing of any particular order? A. None.

Q. I want now, to call your attention to the complaint, if you will refer to it, in the Chase suit, in which the Receivers were appointed? A. I have it.

Q. Can you state from your general recollection, without reading that complaint, the substance of the grounds upon which the relief was asked, why a Receiver or Receivers were asked for, why it became necessary to have Receivers? Are they set up in the complaint? A. They are.

Q. Are they fully set up in the complaint? A. So I think, sufficiently set up.

Q. The object of the suit was to place the road in the hands of Receivers, was it not? A. So it seems.

Q. Refer to the *jurat* appended to that complaint; who made oath to the complaint? A. It appears that Azro Chase did.

Q. Do you know him to have been a Director of that Company at that time? A. Only from what I heard at that time. He was reported to be, and I understood him to be so.

Q. Read that *jurat*? A. "*City and county of New York, ss: Azro Chase being duly sworn, says he is the plaintiff in the action; that the foregoing complaint is true to his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it true.*" I think that is a misprint; I think the words "to be" are there. This original appears to be verified in that way. I have now an indistinct recollection that there was a long affidavit with that order. Yes, "on the complaint and the affidavits hereto annexed." There was an affidavit in that case, I am persuaded; I have no doubt of it. There has been a good deal of confusion, and not a little ignorance on the subject of the *jurat*, and I wish to say what I do say now here; as the Code was originally framed it contemplated no verification, except upon information and belief—I mean belief. All that was required was that a party should show his belief by saying, either by the plaintiff or his attorney, that he believed it

to be true. He would not put anything further in except he believed it to be true. The next Legislature appointed a Committee to go over the Code and alter it in various ways. They altered this section about verification, and undoubtedly intended to adopt the Chancellor's verification, but passed it in this form: "I have read this complaint and know the contents thereof, and the same is true except as to those matters which are therein stated upon information and belief, and as to those I believe it to be true," and the Legislature enacted it so. It was shortly afterwards determined by Judge Sill, in a case at Buffalo, that that affidavit meant nothing at all; that is to say, it was nothing more than belief.

By Mr. PRINCE:

Q. That is this affidavit, omitting "to be"? A. Yes. Then the question very soon arose, when this alteration was made, whether anything more was needed than a complaint, with an affidavit positively sworn to, with the words "to be" in; and although I believe that some persons persist in saying that there must be an additional affidavit, it would puzzle the wit of man, I suppose, to say why an affidavit swearing that another paper contains the truth, is not an affidavit. At all events, the question was brought up and decided in the 6th of Bosworth, in the case of Leffingwell vs. Chave, by Judge Woodruff, and it is the universal rule of my office, wherever a party can swear with the words "to be," never to have an affidavit; and whenever I am asked for it I will say, "You cannot put it in; I will not submit to such a thing as making two affidavits to the same thing;" therefore, whenever the words "to be" are in a verification, that makes an affidavit which verifies the truth, and everything that is in the complaint is stated to be true, except what is stated on information and belief. In this particular case it seems that the verification was in the form provided by the Code, the only effect of which was to compel an answer on oath, and I supposed an affidavit was annexed; indeed, I now remember to have seen that affidavit, and I think I can produce it.

By Mr. CURTIS:

Q. The order was granted on the complaint as verified, and sworn affidavits, and on the consent of persons whose signatures have been read? A. So it appears.

Q. I ask you now, as a lawyer, do you know how Judge Barnard could have refused to act on that complaint judicially, on the proofs presented to him? A. No; I think if he had refused, under the circumstances, he would have been wanting in his duty; and I add here, that on a complaint, much less in its stringency than this, as I understand it, and not verified at all, Judge Peckham, the same night and about the same hour, appointed Mr. Pruyn Receiver of this Company, without the con-

sent of any of the Directors at all. Mr. Van Valkenburg was the plaintiff. In order that I may not be mistaken, will you allow me now, as I am about that, to turn to that book? It is on page 125. There is the complaint of Van Valkenburg, in which the Receiver was appointed, without any plaintiff's name in it at all, signed by Judge Peckham at Albany, and there is that common verification, with no plaintiff's name at all—nothing else in the world.

Q. Which of these rival Receivers was appointed first? A. As we understood it, Courter & Fisk. But do you wish me to explain about that? I believe that Fisk & Courter were appointed first, but I will give you the reasons. The reasons are these: The precise hour of the appointment we find it extremely difficult to ascertain, but Judge Barnard's order was an order which could be made in the county of New York out of Court. Judge Peckham's order was one to be entered at Special Term, and was not entered until the next morning about 9 o'clock, so you perceive I could not give an answer, yes or no.

Q. In regard to what is called the Fuller Receivership, which I think is one of the specifications covered in these charges, are you familiar with the complaint on which that Receivership was ordered? A. I am.

Q. Will you turn to it? A. Yes, sir.

Q. Is that complaint verified? A. Yes, sir.

Q. Does that complaint state fully the ground on which the plaintiff or plaintiffs in the action prayed for the Receivership? A. It sets it out sufficiently, I think.

The CHAIRMAN:

Are these papers in evidence?

Mr. CURTIS:

I want to have it understood, when I examine a witness in this way, in reference to a particular matter, that I refer to it. I don't want to read it.

The CHAIRMAN:

Why not mark it as an Exhibit? If you don't, how are we going to get it before us? It is not in evidence in any shape before us as, I understand.

Mr. CURTIS:

As I understand the ruling of the Court yesterday, when I was not present, either party may refer to the contents of this printed book.

The CHAIRMAN:

Yes, sir; but there is no way in which this can be made a part of our printed evidence, unless it is put in as an Exhibit.

Mr. CURTIS :

We want to have the whole of that record considered in the case for the purpose of examination by the Committee. How far it may be necessary I don't know.

The CHAIRMAN :

Is this a part you think desirable to have put in evidence ?

Mr. CURTIS :

Yes, sir.

The CHAIRMAN :

It strikes me this is the time to put it in.

Mr. STICKNEY :

We shall put it in if you do not.

Mr. CURTIS :

I wish to have it put in evidence.

Q. What is the verification of that complaint? A. It is a sufficient, full verification.

Q. Read it? A. It is what is called among lawyers, I believe, who know anything about the matter, the "iron-clad" oath.

Q. The Receivership was granted under that complaint, and so verified? A. So I understand.

Q. Do you know of any possible object or interest of any kind that Judge Barnard could have had, aside from the discharge of his judicial duty, in granting that Receivership? A. None whatever.

Mr. CURTIS :

I now ask to have the complaint in the Carter and Fisk Receivership considered as in evidence.

Mr. PARSONS :

That is in evidence.

Mr. CURTIS :

And the complaint in the Fuller Receivership considered as in evidence.

Mr. PARSONS :

That is not in evidence.

(The Chairman marked the complaint in the suit of Bush vs. The Albany and Susquehanna R. R. Co., "Charge 2, P.")

Mr. CURTIS :

I want to put in the order appointing Mr. Fuller.

The CHAIRMAN :

The order of the Court of the 14th of August, in that same action, is marked "Charge 2, Q."

Q. Were you personally concerned in making the application for the Fuller Receivership of the Groesbeck stock? A. No, sir.

Q. You were not in town when that was done? A. No, sir.

Q. Do you know any purpose or intent, by any one, at that time, to get that stock into the hands or under the control of Fisk or Gould, or any one else, for the purpose of voting upon it at the election? A. I know of no such purpose, and I don't think any such existed.

Q. Did not the vote on that stock that was given by Mr. Fuller, the Receiver, arise entirely out of accidental circumstances, occurring at the election itself? A. So I believe.

Q. Were not those circumstances these: that the injunction had been put upon the Church party, restraining them from casting any votes at the election upon certain stock, or—will you explain what those circumstances were without my asking you the question? A. I would rather refer to the injunction itself, which is here, in the case of Groesbeck against Gould, and which will be found at folio 3844, page 111, of the second book.

Q. Explain the circumstances under which that vote was given by Mr. Fuller? A. The injunction appears to have been granted on the 6th of September.

Q. What injunction do you now refer to? A. I mean in the Groesbeck case; it appears to have been granted on the 6th of September.

Q. Restraining the defendant Gould from what? A. I will tell you sir; it restrains the defendants from voting on any of their stock until the 3,000 shares in dispute, which we call the Groesbeck stock, should be first voted upon. That is the substance of it—

Mr. STICKNEY :

The prayer and injunction should be correctly read or else put in evidence.

The WITNESS :

This injunction was kept back from being served until just the instant of the election, at 12 o'clock, as I understand; I do not think I saw it served, but it was within a minute or two. Then, in order to unlock the door so that the votes could be cast by those who had the right to vote—by those who held stock represented by gentlemen for whom we in the main appeared—Mr. Shearman advised or suggested to Mr. Fuller that he should vote, and he did vote, and voted for that purpose and that only, at that suggestion and no other, and without any purpose what-

ever by that means to carry the election, except as a make-weight in the election itself, but as a means of putting in lawful votes. That is, as I understand it, the exact truth of the matter.

Q. Could those occurrences, by any possibility, have been foreseen or foreknown before the day of the meeting and the time of the meeting? A. I do not see how they should have been.

Q. Do you know of any arrangement or understanding between Mr. Fuller and Messrs. Fisk and Gould, or either of them, or with anybody acting in their interest, that he should come up to Albany to vote on this stock in any particular way? A. No, sir.

Q. In regard to Mr. Ramsey's arrest, and the rest of the parties who were charged with taking away the books, was not that arrest, at the moment when it took place, entirely the act of the Sheriff, himself? A. Entirely, so far as I know and believe. I will add so far as I know, am informed or believe.

Q. Do you know whether any instructions were given to the Sheriff to make the arrest then and there? A. I do not know that any were, and I do not believe that any were. The circumstances are detailed in these affidavits.

Q. Do you not know that the Sheriff and his counsel have made affidavits under oath, testifying that the arrest at that moment was entirely the act of the Sheriff, himself? A. That is the effect of their affidavits, as I understand them, and they are here and may be seen for themselves by anybody.

Q. Was not that suit and the order of arrest founded upon a special provision of the code to meet cases of that kind? A. The provision for arrest?

Q. Yes, sir. A. Certainly.

Q. The arrest in case of improper motive or the detention of personal property? A. Certainly.

Q. The papers on which Judge Barnard granted that order being presented to him, could he, or could he not, in your judgment as a lawyer, have refused to grant it? A. I do not think he could at all, and I do not think any Judge would have refused it or hesitated for a moment, and I will go further and say that I do not think any Judge in any civilized community anywhere on the face of the globe, where there is law, could refuse to grant that order. I look upon it as one of the greatest outrages ever committed. The holding of them to bail was in a very mitigated form, and to a very inadequate amount or less amount than they should have been held. I do not know how other people may look upon the robbery of books and papers, but it appears to me to be one of the greatest offences that can be committed by men holding positions of trust.

Mr. CURTIS :

I do not know whether I ought to examine Mr. Field in rela-

tion to another branch of these charges and specifications, which have not been gone into by the other side, in reference to what are called the Erie litigations. There has been no examination of Mr. Field in reference to them.

THE WITNESS :

I want to finish my answer to this. If there had been any plan or design to arrest the defendants for the purpose of affecting the election, I do not think anybody with brains enough to go across the street, can tell why they should not have been arrested before they got to the office and kept away altogether, as they might have been, if there had been any such design to which the parties, their counsel, the attorneys and the Sheriff were a party. They had only to go to the door of the building, and, as they entered, to take them off to the Sheriff's office and hold them there until they gave bail, and it would have been all over. The suggestion of the motive is the flimsiest suggestion ever made by a human being. It is absurd on its face, and unworthy of anybody who has any mind at all.

MR. CURTIS :

I will ask if the counsel intend to examine Mr. Field in regard to the Erie litigations?

MR. STICKNEY :

Not at present.

MR. CURTIS :

Do you intend to press that part of the charge?

MR. STICKNEY :

We undoubtedly do.

[The Committee here took a recess for three-quarters of an hour, at the close of which, the examination of Mr. Field was resumed.]

By MR. CURTIS :

Q. Have you with you copies of the affidavits of the Sheriff and his counsel and other parties, detailing the circumstances under which the arrest of Mr. Ramsey was made? A. I have; that is, I have a number of the affidavits.

Q. I would like to have them put in the case.

MR. PRINCE :

Are they included in the book?

THE WITNESS :

No, sir. They were made all after the trial and were filed at Schenectady. Here is the affidavit of Jonathan R. Herrick, [producing a paper which is marked Charge 2 R.] Here is the

affidavit of Jacob Leonard [producing a paper which is marked Charge 2 S]. Here is the affidavit of William J. Hadley [producing a paper which is marked Charge 2 T]. And here is the affidavit of Sheriff Parr [producing a paper which is marked Charge 2 U.]

By Mr. PRINCE :

Q. Can we take these papers? A. Keep them as long as you wish them, but when you get through, be good enough to return them to me.

By Mr. CURTIS :

Q. When the order of arrest came up to Albany you were there, were you not? A. I was there. I have not stated, I believe, where I was in September, and I, perhaps, should state that, so as to show when I went to Albany. I have stated where I was on the 31st of August, I think. I said that I came to New York on the 32nd of August. I was in New York on Wednesday and Thursday and Friday of that week, and I went to Stockbridge on Saturday, the 4th of September. On Monday afternoon I went out in the afternoon train for Albany, and arrived between 4 and 5 o'clock, I think, and remained there until the afternoon train of the next day when I came to New York on the 7th—that is the day of the election; so that I was at Albany on Monday evening, the 6th.

Q. The evening before the election? A. Yes, sir. And then it was, as I understand, Mr. Morgan brought up the order of arrest.

Q. Who is Mr. Morgan? A. Mr. Morgan is a lawyer in this city—William H. Morgan. He was at that time a partner of ex-Governor Lowe and Mr. Clarke in the firm of Lowe, Clarke & Morgan, I think.

By Mr. TILDEN :

Q. He was formerly a partner of Mr. Shearman? A. No, sir; he was brought up in my office, and was the son of an old college friend of mine.

By Mr. CURTIS :

Q. He brought up the order? A. He brought up the order, as I understand from him, and I believe he did.

Q. Did you see him that evening? A. I think so. I say I think so, because he says that he saw me that night. I do not remember it.

Q. You do not remember having any conversation with him about the service of the order? A. No, I do not. He says that when he came there, very late at night, I asked him what he had brought up, and that he said that he brought up, among other things, an order of arrest, and that I said, "You must have it delivered to the Sheriff early in the morning, so as not

“to interfere with the election.” He states that I said that I have no recollection of it whatever, but very possibly I said it. I know that an interference with the election was as far from my thoughts as it was to interfere with an election to take place in Great Britain to-morrow.

Q. In regard to any of these suits that were brought by you or your firm in the name of the Albany and Susquehanna R. R. Co., I desire to know whether you brought any without an authority from somebody competent to give the authority to use the name of the Company? A. Never—that is, never without what we supposed to be authority.

Q. You were asked in regard to the amount of bail that was required from Mr. Ramsey, and there was some comparison instituted with some other case of bail, and the amount required of Mr. Tweed by Judge Barnard was referred to. Are you aware that there was a large number of indictments against Mr. Tweed, separate indictments in respect to which the order of bail of \$5,000 applied to each? Are you not aware of that? A. There were, I know, several indictments against Mr. Tweed, but whether they were then pending or not, I cannot say. My impression would be, that they were not, but I would not venture to say at all.

Q. You do not know? A. No, sir. There are now, at all events, quite a number, but how it was then, I am not able to say.

Q. Do you know anything whatever of any visit of your partner, Mr. Shearman or Mr. Sterling, to Poughkeepsie, to see Judge Barnard at any time? A. I have not the slightest recollection of any such thing; I have no idea it occurred. You know, of course, that in an office such as ours, such a thing might occur without my knowing it, but I do not believe it did.

Q. Have you any recollection of any cause, or any necessity arising for seeking Judge Barnard in Poughkeepsie, for any of these purposes? A. I do not remember any at all.

Q. I am desired by Judge Barnard to ask you a question, which ought to have occurred to me, but which did not, whether there were any relations between you and Judge Barnard or were at the time of any of these occurrences, which would have led you to prefer to go to him to obtain this order of arrest, rather than to any other gentleman? A. None whatever.

Q. If any question arose in your mind about that, what would have been the balance of your inclination? A. I will tell you, sir. So much had been said at different times about applying to Judges out of Court, at their houses, that I made it a rule of my office, as early as the Autumn of 1869, that no application should ever be made to any Judge, except to the Judge assigned to Chambers.

Q. Then holding Chambers? A. Then holding Chambers. The reason why I did that I will explain. In the first place, I

saw a very great difficulty arising out of the practice of going to Judges at their houses. I had found that after the Code was enacted, by the strenuous efforts of Judges in the country, they had managed to have Special Terms kept open at their own houses all the time, which led, as it appeared to me, to infinite abuse, as I found in regard to some of these proceedings before Judge Peckham; for instance, this Receivership was appointed by him, at night, in an office which he occupied, or rather, his son's office, which he says he occupied with him, and that there was an adjournment of Court at that time. It was asserted that there was a Court held open all the time, and the circumstance was so strongly impressed upon my mind, that I made it a rule, and it is the invariable rule in my office, never to depart from it in any instance, to go before the Judge sitting at Chambers. There is another thing which is a matter of practice in New York, and that is, where you have begun a litigation before one Judge, you shall go to him afterwards. In the first Erie litigation I remember—we were counsel—we went out of Judge Barnard's Court into Judge Cardozo's Court, and asked him to hear the matter; he said: "I will not hear you." I said, "Will you not hear us explain the thing?" He said, "I will not hear one word." So Judge Ingraham was applied to on the same occasion to interfere. He said, "Why don't you go to Judge Barnard, or Judge Cardozo, or Judge Brady, or whoever it may be." And I believe that practice is next to universal. I have no sort of idea, if I had gone to any other Judge after this litigation had been initiated before Judge Barnard, and he had made a special order in it, and the thing had been well known, that Judge Ingraham, or Judge Clerke, or Judge Sutherland, would have touched it. I do not think that is the practice of other offices. I think that most offices in New York do not hesitate to go to any Judge they see fit, but it is not our practice.

Q. You did not go to Judge Barnard because you had any preference? A. Not the least, and whoever asserts anything to the contrary, asserts absolute falsehood. I never went to Judge Barnard in my life, that I know, for an order.

Q. Were you ever in his house? A. Never that I know of. I do not think I ever had one minute's conversation with him in my life out of the Court room. I will say this in addition—I think I ought to say it. Since my attention was called to the subject some time ago, I said then, and I say now, that I do not believe that I ever spoke to Judge Barnard, except to bow when I passed him, except once when I went into the Chambers of the Supreme Court, with Mr. Louis, a gentleman from Europe, to get him admitted to the bar, to see Judge Ingraham. When I was there, Judge Barnard and Judge Brady came in, and I spoke to them both, and shook hands with them. I do not believe I

ever had one single word with him out of the Court room except then.

By Mr. TILDEN :

Q. Did you enforce the same rule upon other attorneys and counsel in cases in which you have been counsel, or was that rule merely for your own personal government? A. That was for my own office; I never presumed to dictate to any other office at all, nor do I say it was never departed from; I say it was never departed from knowingly with my consent.

Q. Or with your personal knowledge? A. Or with my consent. That was my general rule. I do not say that never in any instance has it been departed from, but I do not remember ever to have consented to a proceeding of the sort.

Q. But where there were several counsel engaged in the case, others might do it without your knowing it? A. I should resent a dictation to me in respect to what I should do, and hence I should not dictate in respect to the course of others. I do not assume to say what anybody associated with us may have done.

Q. I speak of your office, Field & Shearman? A. Yes, sir; my office. We have four partners. We have a firm name, Field & Shearman. The firm of attorneys consists of my son, Mr. Shearman and Mr. Sterling. I do not have any right to sign the firm name of Field & Shearman.

Q. You are engaged merely in the counsel business? A. That is all.

By Mr. STICKNEY :

Q. You are not a partner in the firm of Field & Shearman? A. No, sir; I am not; I am a partner with those three gentleman. As I have already stated, there was a partnership consisting of us four, and the three junior members in the firm of Field & Shearman are the attorneys. I think that is intelligible.

By Mr. TILDEN :

Q. You are a partner in the business of counsel? A. How we divide our profits is not a thing that is a matter of investigation here. We are all partners in the firm. It is a law partnership, but it is stipulated in the articles, that the attorneys' business, shall be conducted by the three younger partners, who, under the firm name of Field & Shearman, alone, shall have the right to use that name.

By Mr. STICKNEY :

Q. In giving your testimony on what has been called the cross-examination, you read from a pamphlet—what was it, if you please? A. The points and brief in the case of the people, made for the general term.

Q. The points of whom? A. The points made by me.

Q. You did not read from the testimony in that case? A. From this brief of points are extracts from the testimony.

Q. Nor from the opinion of the Court—the decision? A. I read what was extracted from the opinion, from the testimony in the case.

Q. Extracted from the opinion of the Court? A. I speak of points—the briefs in that case.

By Mr. TILDEN :

Q. You said the testimony extracted, and contained in the “opinion”—you made a mistake? A. Yes, sir; what I meant was the brief.

By Mr. STICKNEY :

Q. That is a sufficient answer to my question. I do not know whether the witness wishes to go on? A. These extracts are, I think, printed and annexed to the complaint in the suit of the Company against Ramsey and others.

Q. The portions that you read from the testimony of these defendants deny any knowledge of where the books are, do they not? A. Certainly.

Q. And that they had taken the books? A. I read it—you saw what it said.

Q. They denied that the defendants had taken the books? A. You saw what it was. I shall not tell you further.

Q. Were they the papers before Judge Barnard upon which he granted the order of arrest? A. They showed perfectly well who took the books and kept them, and who told a falsehood afterwards.

Q. Were they not fastened to the affidavit as a part of those arrest papers? A. I should think not; it is unlikely they would be.

Q. You say it was never intended by these gentlemen who subscribed on the nights of the 4th or 5th, to pay anything on the stock. Did they tell you they never intended to pay for it? A. That is as I understood it. I stated, you will observe, that that was from information. If you will wait long enough, I think I will find in this case the declarations that that was so.

Q. That they never intended to pay? A. Yes, sir; I will point it out if you will wait. I think I can show from the testimony of every man who was examined, and who had subscribed, that anybody would say, on the positive proofs, that they did not intend to pay a cent. It was as bald an attempt to cheat as was ever attempted in the world.

Q. Don't you know that Mr. Ramsey testified that he did pay? A. I will find his testimony.

Q. Don't you know that yourself? A. I know nothing ex-

cept what is here, and I shall not tell you what is here. You may find it yourself.

Q. Do you not know that Mr. Ramsey testified, on that trial, when you were present as counsel, that he did pay, and that there was paid, on the part of these persons, ten per cent. in cash, on all that stock to which they subscribed? A. Ten per cent. was paid by all these persons, and you know very well it was paid by money borrowed by Ramsey on the pledge of property that he had stolen from the Company. Ten per cent. had been paid; I stated that.

Q. You stated that they never intended to pay for the stock? A. They did not intend to pay anything. I have no doubt that the plan was, that when the election was over with, they were to be released from paying any more, and to have the ten per cent. refunded. I have no doubt that that was the plan.

Q. Do you know that it was testified that they did pay, within a day or two of their subscription? A. I do not so understand it, and I do not believe you understood it so. I know it was testified that the money was got by this man Ramsey in a most felonious way, and that he paid into the bank a hundred thousand dollars.

Q. It was paid in to the credit of the Company? A. \$95,000 was paid to the credit of the Company.

Q. Afterwards the securities were replaced by other securities there which you say were feloniously taken? A. He said they were. After the robbery was disclosed he so testified. That transaction was this: he had not the money, and they did not intend to pay any, and he got up this subscription and then borrowed the money from Groesbeck on a pledge of the bonds of the Company. He took from the Company what belonged to it, which I did not mention before, and after which, he says, he gave the rest to this man Phelps; that he took them after a negotiation, Phelps and he both knowing that the certificate was false.

Q. This money he borrowed, he testified that he paid to the Company, did he not? A. The money borrowed from Groesbeck was.

Q. Will you please answer my question? A. No, I will not.

Mr. STICKNEY:

I ask that the Committee may insist upon my having an answer, as long as the witness has chosen to go into these matters.

The WITNESS:

I did not choose.

Mr. STRAHAN:

The witness, as I understood, was about to answer.

Mr. PARSONS:

He just said that he would not answer.

Mr. CURTIS :

We cannot possibly differ in relation to the facts of this matter about which the inquiry is being made.

The WITNESS :

I will read here—

Mr. STICKNEY :

I will go on with your examination.

The WITNESS :

I will read what Ramseys says—

Mr. STRAHAN :

(To Mr. Stickney.) Do you waive your question ?

Mr. STICKNEY :

No, sir. I do not waive the question. This money that he had borrowed he testified he had paid to the Company, didn't he? I desire to know whether I am to have an answer or not?

Mr. PRICE :

If the witness desires to refresh his memory he can do it.

(The witness proceeds to examine a book of testimony).

Mr. STICKNEY :

The testimony is that of Mr. Phelps, on page 115, volume 2, of the printed copy case, if you wish to refer to it, and not in Mr. Ramsey's testimony.

The WITNESS :

I will find it in Mr. Ramsey's. I will turn to the testimony and read that which relates to it.

Mr. PRINCE :

Is there any question that this money was paid to the Company?

Mr. STICKNEY :

Not the slightest, and there never was; but the witness has stated that it was not so. I will waive the question, however, rather than to waste the time of the Committee.

Mr. PARSONS :

The witness stated that it never was intended to pay anything, and the inquiry was introduced in answer to that. We never put in anything on that matter. We consider it entirely immaterial, but we have no right to prevent the testimony coming in.

The WITNESS :

If you will give me time to look up the passages, I think I can satisfy you that there never was any intention to pay a cent.

Mr. PRINCE :

(To the official Stenographer.) Do you represent Mr. Tanner?

The OFFICIAL STENOGRAPHER :

Yes, sir.

Mr. PRINCE :

We do not wish anything to go down but the testimony—the questions and answers ; we have had a great deal of trouble already, by having other matters put in to the written testimony.

By Mr. STICKNEY :

Q. Have you ever been informed that a telegram was sent to Judge Barnard, at Poughkeepsie, from New York, on the evening of the 6th of August, when the Receivership was granted?
A. I do not think I ever received any information on the subject except what was contained in the printed papers.

Q. Has Mr. Sterling never told you that? A. I decline, for the reason that I have stated before, to tell what my associate counsel has said to me. I think it is improper—I think the question is impertinent—improper for you to ask and improper for me to answer.

Q. I ask an answer to that question if the Committee think it is proper.

Mr. FLAMMER :

On this question, perhaps, you can give an answer without naming in your answer the source of your information.

The WITNESS :

The question is, whether my partner, Mr. Sterling, told me so. I am asked to state a conversation between Mr. Sterling and myself. I have not the least objection to telling that no such a thing occurred, but I will not be in the position of stating, as a lawyer, what my associate has said.

By Mr. STRAHAN :

Q. I understood you to say that you never had any information concerning that, except what you saw in the printed papers?
A. I did not.

By Mr. PRINCE :

Q. What was the information in regard to that contained in the printed papers, according to your recollection? A. Accord-

ing to my recollection there was some testimony taken at Albany by Mr. Smith in relation to a telegram received at Poughkeepsie, but the recollection of it is so indistinct in my mind that to say where it was printed I cannot tell. It may be that it was in the newspaper reports of testimony.

Q. That was all? A. My information on the subject is extremely slight. If any of you gentlemen think it is proper to tell what my associate said to me, I will tell.

Mr. CURTIS :

Have you not derived the impression from seeing something which was in a certain letter written by Gen. Barlow, and published in the newspapers? A. Perhaps it is; I cannot say.

By Mr. STICKNEY :

Q. You stated, on your examination by Judge Barnard's counsel, that the object of the Chase suit was to place the road in the hands of a Receiver. In the hands of what Receiver was it the object of that suit to place the road? A. How you can suppose, where the object of a suit is to place the road in the hands of a Receiver, I should know the particular persons, I cannot understand.

Q. That was your own statement? A. My statement was that the object was to place the road in the hands of a Receiver, but no particular person. I don't know any particular person.

Q. In the hands of what Receiver? A. How do I know?

Q. Will you let me finish my question? That is the proper manner for a witness. A. I thought you had.

Q. I do not think you did. In the hands of what Receiver, was it the intention to place the road? A. I do not know what you mean by your question.

Mr. PRINCE :

I do not think that you have laid the foundation for that question.

Mr. STICKNEY :

The witness, in his testimony, stated that it was the object to place the road in the hands of a Receiver or Receivers.

Mr. PRINCE :

It seems to me, if I remember right, the object was to place it in the hands of Mr. Fisk and Mr. Courter as Receivers.

The WITNESS :

I was a hundred and fifty miles away when the Receivers were appointed.

Q. Were you a hundred and fifty miles away when the suit

was commenced? A. Yes, sir; they were appointed at that time.

Q. Will you say whether the names of Charles Courter and James Fisk, Jr., were not evidently written beforehand, at the time the paper was drawn and in the same handwriting without the slightest blank between the words therein given [producing the order for the Receivership to the witness]? A. You can judge of that as well as I. I have testified to it as being in the handwriting of Mr. Shearman, I believe.

Q. I wish you to answer that question—whether those names are in the same handwriting? A. I have testified to it.

Mr. NILES:

The counsel is not on the stand and the fact cannot appear upon the notes as it appears in the paper.

Q. Are the names inserted in the same handwriting? A. I have testified to it.

Q. Do not these words—James Fisk, Jr. and Charles Courter—appear upon the face of the original order to have been written in at the time the order was originally drawn? A. I answer that I cannot tell anything about it. They are all in the same handwriting—that is all I know.

Q. You do not know whether they appear to have been written at the same time, and with the same ink, as the balance of the order? A. No, and nobody else can know. If Mr. Shearman drew that, leaving a blank, and then took it to Judge Barnard and wrote the names in there, it would appear just as it is now, exactly.

By Mr. STICKNEY:

Q. In your opinion it would be just as it is now? A. In my opinion it would not show at all when these names were written.

By Mr. NILES:

Q. That is your answer, that you cannot tell whether they appear to have been written at the same time and in the same ink? A. I say it seems to be in the same ink; but whether it was five minutes later than the body of the paper was written, I cannot tell, and nobody else can.

By Mr. PRINCE:

Q. If the blanks had been left, and they had not been precisely the length to include the names inserted, and the names were in the same handwriting, would it not then show that they had been inserted after? A. If they had not been of the same length, of course the blank would not have been filled.

Mr. STICKNEY:

This is a material question that I ask the witness, but he is not disposed to answer.

Mr. PRINCE :

I think that the question is admissible.

By Mr. HAYES :

Q. If this order had been written, all of it, at the same time, by the same hand, and the names of the Receivers, herein mentioned, had been written in red ink, you could swear then that it was written at some other time, could you not? A. I think the question answers itself.

Q. I simply put it in that way to illustrate it. A. I should think the question answered itself.

Mr. PRINCE :

But this is not written in red ink.

A. It is a mere guess anyway, and one person, as well as another, can guess about it.

Mr. CURTIS :

So far as the interests of the accused are concerned, and he is the only party to be affected by this hearing, I do not care about the matter one way or the other.

Mr. PARSONS :

The difficulty is that the witness swears there was no intention to have these particular gentlemen appointed Receivers, and he leaves the inference that possibly these names were suggested by Judge Barnard at the time the order was made.

THE WITNESS :

I do not know anything about it. You can judge as well as I.

MR. HAYES :

It looks to me as if Mr. Shearman drew the order, and that the names were filled in at the same time that the order was drawn; it would be proper to call Mr. Shearman to swear to these facts.

MR. NILES :

The witness says he cannot tell, and that ends that story.

THE WITNESS :

I can guess, but that does not constitute evidence.

By Mr. STICKNEY :

Q. Will you please state the result of your guess? A. I will not guess.

By Mr. CURTIS :

Q. I would like to have this statement entered, that so far as

the interests of Judge Barnard are concerned the Committee may take this just as they please. They may assume that Mr. Shearman came there and with their names inserted, or they may assume that Judge Barnard nominated them taking it either way. I know what the fact was, but I cannot testify.

Mr. NILES :

That is the only thing we care about. We do not want any assumptions whatever. Mr. Field says he does not know anything and cannot judge of that, and that is the end of it.

THE WITNESS :

I can judge.

Mr. NILES :

That is what I asked you.

THE WITNESS :

I do not mean to judge about it.

By Mr. NILES :

Q. In your judgment, were the words Charles Courter and James Fisk, Jr., written into this order at the same time that the balance of the words in the line were written? A. (After looking at the paper.) I can not say that there is anything upon the face of this paper which informs me that those words were written at the very same moment which those which precede and which follow them were written. The blank is all filled, as would be the case if they were written at the same time. I can guess as well, perhaps, as another person, but in giving testimony on the subject I cannot.

Q. That is what I understood you to state before? A. And that is what I state now.

By Mr. STICKNEY :

Q. Suppose the main body of this order to have been written in a law office at the Grand Opera House on the corner of 23d street and 8th avenue, and the names in the order to have been written in a real estate office some where else, is it probable in your mind that these names, Charles Courter and James Fisk, Jr., would appear precisely in the same ink which was used by Mr. Shearman in drawing the order at the Grand Opera House? A. When counsel ask these questions, whether such a thing might be, I tell them I shall not answer their question. It is not a proper question to put, nor a proper question to be answered. The probabilities every one can judge of for himself.

By Mr. NILES :

Q. It is not necessary for you to discuss the matter further than to say you will not answer? A. That is my answer.

MR. STICKNEY :

Q. I am quite content to have the witness refuse to answer.

A. I do not mean to be made to say a thing that I do not know. It may be that Mr. Shearman will come and say that he wrote those words five minutes after he wrote the other, but I will not be made to say it is not so. He will state the truth about it. I will not guess. I do not mean to say anything more on the subject.

Q. They are in the same ink, and in the same handwriting as the rest of the order? A. I have already said that I cannot tell, and I will not answer further unless I am obliged to.

Q. Has Mr. Shearman ever stated to you that he took that order to be signed? A. I decline to state what Mr. Shearman told me.

Q. Has he told you that he gave the order to Mr. Sterling, and that he took it to Judge Barnard to be signed? A. For the same reason I refuse to answer any such question.

Q. Has Mr. Sterling told you that he took it from Mr. Shearman to Judge Barnard to have it signed? A. Why do you want to repeat these questions? I do not think they are proper. I decline to answer because I think it unprofessional to ask such questions, and entirely so to answer them.

MR. PRINCE, to the official stenographer :

You need not take this part down.

THE WITNESS :

Have I not a right to explain my reasons for declining?

MR. PRINCE :

I do not think you have.

By MR. NILES :

Q. Do you decline, claiming your professional privilege? A. It is not a claim of professional privilege.

MR. PARSONS :

It is not out of deference to us that Mr. Field has assigned a reason.

MR. PRINCE :

I think the Committee are bound to protect the witnesses who come here, and I think they are equally bound to protect counsel.

MR. FIELD :

I think it is proper, if I give a reason for declining to answer, that it should be taken.

Mr. NILES :

I do not think it is proper to take it down when a witness says he considers it impertinent on the part of counsel.

The WITNESS :

I said I thought it was unprofessional to ask such a question, and entirely unprofessional to answer.

Mr. STRAHAN :

I think the witness has a right to give his reasons.

Mr. PRINCE—to Mr. STRAHAN :

Do you want the Committee to go into an executive session ?

Mr. STRAHAN :

No, sir ; not at all.

Mr. VEDDER :

When the witness declines to give an answer, there should be some explanation given for declining, so that the refusal may not appear on the record as against him that there was something he did not want to disclose.

Mr. STRAHAN :

That is the reason why it should go on the record.

By Mr. STICKNEY :

Q. You have stated, on what is called your cross-examination, that you considered all the orders which were granted by Judge Barnard in this litigation to have been proper orders. Do you mean to state, in addition to that, that you considered they were all granted under proper circumstances? A. I do not know of any which were granted under improper circumstances.

Q. Do you consider that the order appointing Messrs. Fisk and Courter Receivers was granted under proper circumstances, so far as your information of those circumstances goes?

Mr. STRAHAN :

Allow me to ask whether the circumstances under which the order was granted have been put in evidence.

Mr. ANDREWS :

It has only been published in the newspapers.

Mr. PARSONS :

Mr. Field declined to state, shielding himself under the obligation restraining him from making any statement. He does not pretend that he does not know the circumstances under which the order was granted, and we have a right to know what his views are under any circumstances.

Q. I will repeat the question. Do you consider that order appointing Messrs. Fisk and Charles Courter Receivers, was granted under proper circumstances, so far as your information of those circumstances goes?

Mr. CURTIS :

I should like to have an explanation of that question. What are the circumstances to which the counsel refers? Does he refer to the circumstances under which the road was situated, or to the circumstances under which the parties were situated, or does he refer to some supposed state of circumstances under which the order was signed.

Mr. STICKNEY :

The question itself shows.

Mr. CURTIS :

No ; it does not show, I insist.

Mr. PRINCE :

Let the witness decide himself in his answer.

A. The question, as I understand it, asks my opinion upon a hypothetical case. I do not know that my opinion on any subject is in question, and I decline to give it.

Q. I ask your opinion on the circumstances under which you have been informed that the order was granted? A. I have already stated what I have to say about that.

Q. In the opinion you have expressed as to the propriety of granting that order, did you give your opinion as to the propriety of the circumstances under which the order was granted?

A. I gave my opinion upon the papers as they appear.

Q. And not at all as to the propriety of granting the order under the circumstances under which it was granted?

Mr. STRAHAN :

(To Mr. Stickney.) Do you mean circumstances of time and place, or what?

Mr. STICKNEY :

Time and place?

Mr. STRAHAN :

The circumstances set forth on the face of the paper?

Mr. STICKNEY :

The time and place principally? A. You must first inform me what they were.

Mr. PARSONS :

If the witness means to state that his opinion is based upon the

papers upon which the order purports to be granted, that will terminate this inquiry?

THE WITNESS:

I have already stated what I think. The question was asked, as I remember it, whether I thought the orders had not been made properly, and I stated that I thought they had. I of course meant that the judge to whom the papers were presented was at liberty or was bound to grant the order. That is what I mean exactly, neither more nor less.

Q. You stated, as I understood you, that the order granted by Judge Barnard appointing the receivership was granted at an earlier hour than the one granted by Judge Peckham. At what hour was the order granted by Judge Barnard, to your knowledge and information? A. I forget the precise hour, but as far as I remember it was between nine and ten o'clock. I could not undertake to be precise about that.

MR. PRINCE:

Morning? A. Evening.

BY MR. STICKNEY:

Q. Where? A. I do not know.

Q. Where were you informed? A. I have seen no evidence whatever as to time or where it was.

Q. Where were you informed? A. I have already said that I should give you no information of what had been said to me by my associates.

Q. Do you also forget the hour when Judge Peckham's order was made? A. I believe no more than the other. To the best of my recollection they were both made about the same time, between nine and ten o'clock, but I cannot say the precise hour of the night. Both were in the evening, and both were granted while I was not there. I got my information from the testimony taken on the reference chiefly. A reference was had upon which testimony was taken, and it was in respect to that that I chiefly get my information in regard to the hour or time of it.

BY MR. PRINCE:

Q. Who obtained the order before Judge Barnard? A. I do not know.

BY MR. STICKNEY:

You have no information in regard to it? A. I decline to say what information I got from my associates.

Q. The information you have in regard to the obtaining of that order is entirely from your associates? A. Only what was obtained on the reference. There was a reference at Albany in respect to the appointment of these two receivers. During the contest between the rival claimants. There was a reference to ascertain the time when

the orders were granted, and to the best of my recollection, the testimony taken shows that the order granted in New York was between nine and ten o'clock, and that the order granted in Albany was between nine and ten o'clock.

Q. When you speak of an order granted in New York you mean Judge Barnard's order? A. Yes, sir. I have already stated I have been informed that the order granted by Judge Peckham was not entered until the next morning, and it did not take effect until then.

Q. Who, so far as you know, can give exact information as to the time when Judge Barnard's order was made? I suppose that Mr. Shearman or Mr. Sterling can.

MR. HAYES :

I was going to suggest that I did not see the importance of Mr. Field's testimony in respect to whether this order was granted properly, as far as time and circumstances are concerned, unless he is put upon the stand as an expert on the question of judicial propriety?

MR. STICKNEY :

He professes to be that.

MR. CURTIS :

No, sir, he professes to be a lawyer .

MR. HAYES :

That is the only bearing I can see unless he acknowledges he is an expert on judicial propriety.

MR. PRINCE :

This was brought out by allowing Mr. Curtis to examine the witness upon the point.

MR. CURTIS :

No, sir. Mr. Field was examined by me wholly as a lawyer, as to the judicial propriety of granting this order on the papers presented I never asked him about any question of circumstances, time or place.

MR. STICKNEY :

We wish to go into the question of judicial propriety, upon one or two other points, upon each of which he is equally competent to give an opinion.

MR. STRAHAN :

I desire to have the witness confined to the facts. Any opinion he has expressed on collateral matters ought to be excluded.

MR. STICKNEY :

We did not go into the matters.

MR. STRAHAN :

I am referring to the whole course of the examination since he came upon the stand.

MR. STICKNEY ;

We are compelled to go into these matters, because they have been gone into on the other side.

THE WITNESS :

When I came in this morning, I objected to going into any thing but my personal knowledge, but I was told that hearsay was proper information, and by admitting that we have got into this trouble.

BY MR. STICKNEY :

Did the examination under oath to which you have referred give you the only information you possess as to the time and place of the signing of the order by Judge Barnard? A. No.

Q. Have you any information as to the time and place except what you have obtained from Mr. Sterling or Mr. Shearman? A. I have information from the papers ; I have seen statements from Mr. Barlow which I believe to be false, and I have seen statements from Mr. Curtis which I believe to be true.

Q. What are those ; let us have them ?

MR. PRINCE :

Is it necessary to have these newspaper statements ? .

MR. PARSONS :

Mr. Field has stated that his whole testimony in reference to this whole transaction is made up of statements, either of his own personal knowledge or statements upon information which he believes to be true. Now he states one of the sources of his information was statements in print by Mr. Curtis, and it seems to me that it is material that we should have the testimony finished.

MR. FIELD :

No, sir ; the question was asked me in respect to Mr. Curtis was merely in reference to the documents.

MR. PARSONS :

Mr. Field has been careful in his examination to state that all his evidence in reference to this whole transaction is based, in part upon knowledge and in a large part upon information.

THE WITNESS :

Certainly.

MR. PARSONS :

It seems to me there is a great propriety in having the statements

made by M. Field, upon what he calls reliable information, and what reliable information he has as to the place where this order was signed.

MR. STRAHAN :

As I understand it, the witness has said that most of his information he has obtained from his partners, which he refuses to give on the ground of privilege, and that the other source of information is the public prints.

MR. PARSONS :

Mr. Field stated that he had information from Mr. Curtis which he deemed reliable, Mr. Curtis being now here as Judge Barnard's counsel.

THE WITNESS :

I said that I had seen statements in print by Mr. Barlow which I believed to be false, and statements from Mr. Curtis which I believe to be true. I think that is what I said.

MR. PRINCE :

It would not prove anything to produce these statements in evidence.

MR. STICKNEY :

I think it is material to put in all these declarations from all sources, but I do not care to go any further than I have ; I think the committee may safely assume that my seniors will not allow me, if I am disposed, to waste the time of the gentlemen here needlessly.

Q. You stated, as I understood you, that you knew of no possible interest that Judge Barnard could have for granting this order for the receivership appointing Mr. Fisk and Mr. Porter ? A. I did.

Q. Can you state any possible interest he could have in coming from Poughkeepsie in response to a telegram signed by Mr. Coleman at Mr. Fisk's request ?

MR. ANDREWS :

That is assuming something that has not been proven at all.

MR. STICKNEY :

Shall we recall the witness in order to prove that ?

MR. HILL :

It is the purest speculation in the world as to what interest Judge Barnard can have.

Q. Can you state what possible interest Judge Barnard could have in coming from Poughkeepsie specially for the purpose of granting that order ? A. I decline to give any opinion upon a hypothetical case.

Q. You did give an opinion upon a hypothetical case on your

cross-examination ; did you not ? A. That is a question which I think is not proper to be put or to be answered.

Q. I am quite satisfied with that answer. The voting by Mr. Fuller on the Groesbeck stock, as I understand you, you believe to have been entirely accidental ? A. I believe—no ; I do not believe it to be an accident at all.

Q. What do you believe on that subject, and what did you state ? A. I do not remember what I stated. I believe that the vote given by Mr. Fuller was rightly given, and I believe it was not contemplated at all before the occurrence that morning. I believe that the service of that injunction—the Groesbeck injunction—at the moment was a direct design to throw out the votes of the Church party, and to give the election to the Ramsey party. I believe that when Mr. Shearman heard and saw that, he suggested or advised Mr. Fuller to cast his vote, and that he did so for the purpose of allowing the other votes to go in, not with a view that the votes would be a makeweight in the election. I believe Mr. Shearman was right in the advice he gave, and that Mr. Fuller was also right in the vote he cast.

Q. Had you any knowledge of any intention before the hour of election that Mr. Fuller was to vote on this stock ? A. I think none at all. To the best of my recollection. I did not hear of the injunction, or of the intention of Mr. Fuller to vote before he voted. I don't remember seeing him vote, but I heard of it shortly afterwards. I will not state positively that I did not hear of it just previous to his voting, but my impression is that I did not.

Q. Had you any knowledge or information of any intention on Mr. Shearman's part as to how Mr. Fuller should vote on this stock, prior to the injunction ? A. None whatever. I believe on the contrary that he never intimated to Mr. Shearman until the time in reference to his voting on the stock.

Q. Have you had any information from Mr. Fuller that he intended to vote on this stock before the service of the injunction you have mentioned ? A. No, sir, none whatever. Mr. Fuller asserts in the most positive manner that he had none, and I believe him to be a man of truth and honor.

Q. Did you hear Mr. Fuller's testimony on the trial of the case of the People against the Albany and Susquehanna Railroad ? A. Yes sir.

Q. Did you hear Mr. Fuller state under oath that he voted the Fisk and Gould ticket ? A. He may have so stated. I do not remember the testimony sufficiently to answer exactly without turning to the passage. I will turn to it and see.

Q. I will ask you one or two questions without troubling you to do that. A. I shall not answer without reading the page.

Q. Then refer to page 393 of volume 1. Did you hear Mr. Fuller state that Mr. Shearman gave him the Fisk and Gould ticket that he voted at the Delavan House in the morning, and that he went from there to the Susquehanna office with Mr. Shearman ? A. Where is it ?

Q. About the middle of page 393. A. I will read: "Q. Where did you get that ticket to vote? A. Mr. Shearman gave it to me, I think. Q. When did he give it to you? A. I do not remember but that it was that morning; it was either in the room or in the Delavan House. Q. Cannot you tell which? A. I think it was the Delavan House. Q. Did you then ride down in a carriage with Mr. Shearman to the building? A. Yes sir. Q. And you were provided with the ballot before you reached the building? A. I was." I heard that, I believe.

Q. If Mr. Fuller is a gentleman of honor, you believe that to be true? A. I decline to answer any question about that.

Q. Did not Mr. Fuller state another thing on that trial, that he voted the Fisk and Gould ticket? A. Show me the passage.

Q. It is six or eight lines from the bottom of the page [page 393, printed book]. A. I think you put your question in those terms.

Q. Did you not hear Mr. Fuller's testimony under oath like this: "Q. Did you vote more than one yourself? A. Yes sir. Q. How many? A. Two. Q. The Fisk and Gould ticket? A. I do not know what you mean by that. Q. The ticket upon which Fisk's and Gould's names were printed? A. That was the ticket I voted." Did you hear Mr. Fuller give that testimony? A. I have no doubt I did. I do not remember particularly.

Q. Did you hear Mr. Fuller give this testimony, which is to be found on page 387 of the printed book, "Q. At whose request did you come to Albany on that occasion? A. At no one's. Q. Had no one spoken to you on the subject before? A. Yes sir. Q. Who? A. Mr. Shearman. Q. Anybody else? A. Possibly Mr. Field, but I am not clear." Did you hear that testimony given? A. No doubt I did, but I have no recollection.

Q. Was the Mr. Field alluded to there yourself, so far as you have any opinion on the point? A. I suppose it was; I cannot say any more. It may possibly have been my son, but I suppose he referred to me.

Q. I will call your attention to one or two other portions of testimony. Mr. Fuller's receivership of the stock on which he voted was that which grew out of the Bush suit, was it not? A. I have no knowledge of his being appointed a receiver in any other case.

Q. That was the case, was it not? A. I have answered all I can.

BY MR. PRINCE:

Q. You know he was appointed in that case? A. It is the Bush suit. I know nothing except what the papers show.

BY MR. STICKNEY:

Q. Did you hear Mr. Bush on the trial give this testimony which will be found on page 496 of the printed book. "Q. You brought a suit against Mr. Ramsay? A. I did. Q. When? A. In July or August. Q. What time in July—the latter part of July? A. Yes, sir; the latter part of July. Q. Where was the

"suit commenced? A. New York. Q. Who was your attorney? A. Messrs. Field and Shearman. Q. Did you employ them? A. I did. Q. Were the papers prepared? A. By Mr. Shearman. Q. Where? At his office. Q. Where about is his office? A. In Chambers street. Q. Is that in the Erie Railroad building? A. Yes, sir. Q. How did you come to get acquainted with Shearman? A. Through Mr. Gould. Q. What Gould? A. Jay Gould. Q. Did you begin the suit at their instance—at the instance and advice of Gould? A. I did it on my own account. Q. Did he advise the bringing of the suit? A. I consulted with him. Q. Before you commenced the suit? A. About the time." Q. Did you hear Mr. Bush give that testimony under oath on the trial? A. I believe I did.

Q. You have no doubt, have you? A. Not the slightest.

Q. After you had heard this testimony of Mr. Bush and Mr. Fuller, are you of the opinion that Mr. Fuller had no intention of voting until after the service of the injunction at the time of the election? A. The question is impertinent because it asks whether I gave my testimony before understandingly. I gave it understandingly and perfectly and I do not choose to repeat it.

Q. As far as your experience as a lawyer has gone, have you noticed that in examinations it is the rule or practice that witnesses shall judge of the propriety, relevancy or pertinency of questions? A. It depends upon who is the questioner and who is the questioned.

Q. I think it does entirely. A. Then we agree.

MR. PRINCE:

It is the first time. (Laughter).

Q. If there had been no intention on the part of Mr. Fuller to vote on this stock, how do you explain the fact that Mr. Shearman gave him the tickets in the morning at the Delavan House before they had left for the railroad office? A. I am not called upon to explain anything whatever. He may explain for himself. I think it is perfectly consistent.

Q. Mr. Morgan has informed you, I understand your testimony to be, that you gave directions to him to have the arrests effected there early so as not to interfere with the election or something to that effect? A. That he told me it ought to be.

Q. Did you give him any direction, if the arrest could not be effected before election it should not be effected until after? A. I have no recollection, as I stated before, of giving any direction at all. I do not recollect any such conversation with Mr. Morgan.

Q. If, in your opinion, as you have stated, no judge would or ought have refused to have granted that order of arrest on these papers, can you state whether there was any sufficient reason why the application should not have been made for that order to the judge who was holding the chambers of the court? A. I do not know anything about it. I was not here. I suppose there were good means why it was made

to Judge Barnard. Mr. Morgan will explain it himself, I have no doubt.

Q. You have testified that there were no peculiar or intimate relations between yourself and Judge Barnard. Do you know whether there were any such intimate relations between Mr. Fisk and Judge Barnard? A. I never knew.

Q. Have you ever been informed that there were? A. The information I have got from my associates or my clients on any subject whatever, I shall not tell you.

Q. On any subject? A. On any subject in which there was any confidence between us. I have already explained myself fully on that head, and I do not know why you persist in asking the questions.

By MR. PRINCE :

Q. Have you any information outside of them? A. Not the slightest to my recollection. I never saw Judge Barnard in the presence of Fisk and Gould that I remember. I never saw him at the Erie office that I remember except once, and that was at Mr. Fisk's funeral.

By MR. STICKNEY :

Q. You stated that you have never seen him in the presence of Mr. Fisk and Mr. Gould. Have you ever seen him in the presence of Mr. Fisk alone? A. No, sir.

Q. Or in the presence of Mr. Gould alone? A. I think not.

Q. Or in the presence of Mr. Lane? A. I think not.

Q. You stated that you had made it a rule in your office that no application should ever be made for orders except to the Judge then holding Chambers. Has that rule been enforced by you? A. I have stated that it has to the best of my recollection in all cases.

Q. Was it enforced in regard to the order for receivership for this road, appointing Mr. Fisk and Mr. Courter? A. I do not know any particular reasons why the application was made to one Judge at that time rather than to another. You will have to ask somebody else. I can only say that has been the rule of my office since the Fall of 1869.

Q. This was in August 1869? A. I cannot give you any reason why one Judge was applied to rather than the other.

Q. I ask if the rule was enforced in this case? A. I think it was adopted in the Fall of 1869.

Q. Later than your application in that case? A. Yes, sir, that is my impression—later than the sum of 1869. The rule was adopted in the autumn of 1869 to the best of my recollection.

Q. As near as you can recollect after the September 7th election? A. Yes, sir, I should think so.

Q. Was it before or after the gold litigation, if you remember? A. It was after a part of it, but not after the whole of the gold litigation. You have fifteen suits which you are carrying on against us

arising out of the gold transaction, and which we are to defend, and these are likely to last sometime yet.

Q. I refer to the injunctions and receivership in the gold litigation?
A. Give me the dates and I will tell you.

Q. In the months of September and October, 1869. A. I cannot tell you whether it was October.

MR. STICKNEY:

That is all.

THE WITNESS:

The counsel asked me whether I, standing at the door of the room, spoke to Ramsey, saying, "How are you, Ramsey," and I answered that I didn't remember any such thing. I remember nothing of that sort; it is said that I showed pleasure; I can give a reason for showing pleasure; we had just, as I supposed, carried the election, that is to say, had organized a stockholders' meeting, and appointed inspectors who would act, as we thought, properly, and had defeated a cabal—that was my impression at the time—and I have no doubt that my countenance showed the pleasure that I felt. But if anybody asserts that I felt any pleasure at Ramsey's arrest or Smith's arrest, he asserts a gross and monstrous falsehood. I can, perhaps, give some explanation of the zeal with which the sheriff acts by relating an incident on the day—

MR. PARSONS:

Before Mr. Field proceeds to make his explanation, I desire to say that if it brings in matter upon which we desire a cross-examination, we shall ask the tolerance of the committee.

MR. STICKNEY:

And, I would ask, is this material to Judge Barnard?

THE WITNESS:

It is material to matters which have been asked here. I think that most of the questions that have been put have nothing to do with the investigation of the charges against Judge Barnard, but this matter I propose to state, if the committee do not prevent, is important.

MR. FLAMMER:

Of course, subject to examination, if the counsel desire.

THE WITNESS:

I do not care how much they examine me, but I want to show some reason why the sheriff follows up matters so strictly. At the time we went to the Governor's room, on the 11th of September, to sign the papers putting the road in the hands of the appointee of the Governor, to my astonishment, while we were there, in came the sheriff with the warrant to arrest Mr. Pruyn—with an attachment to arrest Mr. Pruyn

in the Governor's room. I expressed my astonishment at the impropriety of the act.

By MR. STICKNEY :

Q. What day was that? A. The 11th of September.

Q. Can you remember the hour? A. I cannot remember the hour. I have not been asked by any of the counsel why there was any need or motive for the service of this order of arrest which was served on the 7th. I will give the gentlemen a reason. Pruyn, as we had understood, had run away. He had left the city immediately upon the first proceedings, and gone to Rhode Island. Ramsey, we understood, had gone off to Vermont, or had gone away somewhere. There were various processes out against Pruyn, and we could not find him. We thought—my clients thought, that Pruyn would come back to town on the election, and that that day he would be in Albany, and it was important to have him served. This is explained very much by the affidavits of Mr. Parr and Mr. Hadley, but as those have not been read, I will not refer to them.

MR. PRINCE :

They are in evidence.

THE WITNESS :

That is all I think that I desire to state.

By MR. STICKNEY :

Q. You knew that Mr. Ramsey had presented himself before Judge Barnard and surrendered himself voluntarily on the attachment?

A. I knew that he had surrendered, that he had been in court—I knew that he had been in court.

Q. And that no process had been subsequently issued? A. No attachment?

Q. Yes, sir? A. Not to my knowledge.

Q. You have testified that you were familiar with all the orders which had been granted in this litigation? A. Certainly I was. When I say I am familiar, I do not mean that I am now, but that I was. I can remark that there were twenty-five suits or proceedings, fifteen by the Ramsey party, and ten by the other party, and as to all the orders in all of them, I cannot undertake to say now from memory. I do not now remember any such attachment.

Q. You remember that Mr. Ramsey's going to Vermont was prior to his appearing in court under that attachment? A. I suppose it was.

Q. You knew Mr. Pruyn's absence from the city was prior to his appearing voluntarily in the court, under the attachment which had been issued against him? A. He did not appear until after that.

Q. He did appear at the September election, did he not? A. I think not.

Q. Mr. Pruyn? A. I think not.

Q. Will you be positive about that? A. I will not be, but my impression is the sheriff could never get a sight at Pruyn, and that he did not come back at the election. My impression is that he didn't get him until the 18th.

Q. From whom did you get your information that Mr. Pruyn and Mr. Ramsey had gone from the State? A. I cannot say; but I learned it at Albany, in such a way that I had no doubt about it.

WILLIAM H. MORGAN, *a witness, being duly sworn, testifies:*

BY MR. STICKNEY:

Q. When did you first have any thing to do with this Albany and Susquehanna litigation? A. I cannot give you the date, it is so long ago; but I had more or less to do with it from the very beginning.

Q. By whom were you retained? A. By the Erie Railway Co.

Q. Was it before or after Mr. Fisk and Mr. Courter were appointed receivers of the road? A. Before that, I think; I had been counsel for the Erie Railway Company before this matter was commenced at all.

Q. And of Mr. Gould and Mr. Fisk personally in some matters? A. I have been of Mr. Fisk, and also in some matters where Mr. Fisk and Mr. Gould were jointly interested.

Q. Did you appear for the Erie Railway Company in matters subsequent to the Susquehanna litigation? A. Yes, sir; both subsequently, and before.

Q. Ever since? A. Yes, sir.

Q. And down to the present time? A. Oh, yes; I am still one of the counsel of the Erie Railway Company.

Q. You are of the firm of Lowe, Clarke and Morgan? A. That was the firm; I have no partners now; we have dissolved the partnership in April; we keep the same office and have some joint matters that we carry on as we used to, but it is not a regular co-partnership.

Q. During or just prior to this litigation did you have your first conversation in regard to it? A. I cannot recollect.

Q. Was it with Fiske and Mr. Gould? A. I presume it was Mr. Fisk, if I had any, but I really do not recollect any conversation now.

Q. Can you fix whether your first conversation with Mr. Fisk was before or after the granting of the order appointing him and Mr. Porter receivers? A. I cannot; but I presume it was before.

Q. Were you at the Erie office on the night of Friday, August 6? A. I cannot fix that date without refreshing my memory; I do not know whether there is any means by which I can do it.

Q. Did you go with Mr. Fisk, Mr. Porter, Mr. Ensign, and Mr. Sterling to Albany on any occasion by the eleven o'clock train at night? A. No, sir; I went to Albany one night, but I was not with them, or if they were on the train I did not know it; I do not think they were on the train.

Q. Do you know anything of the circumstances connected with the granting of that order for the receivership? A. I do not.

Q. Have you information as to when that order was obtained? A. Well, I think not; so that I could fix the dates; I have information that it was the first order of the receivership granted; that is the only information I have; I knew at the time I expect the dates and the exact hours, I think; not from personal knowledge, because I had nothing to do with those orders, but only what I was informed.

Q. Do you remember who gave you the information? A. I do not.

Q. Was it Mr. Sterling? A. I do not know, I am sure; it is a matter that I presume I talked with a dozen about.

Q. Did Mr. Shearman give you any information on that point? A. I think not; but I am not sure though.

Q. Did Mr. Sterling ever say to you where it was signed? A. No, sir.

Q. Did Mr. Shearman? A. No, sir; I have never heard.

Q. Did any one ever tell you? A. I have read something about it in the newspapers, and that is all I know about it.

Q. You have no other information? A. No, sir.

Q. At what time did you first go to Albany in connection with these matters? A. It was the night before the election.

Q. What had you just done prior to your going to Albany on that night? A. I had been procuring an order of arrest for the parties that were charged with stealing the books of the Albany and Susquehanna Railway Company; I took these arrest papers and other papers with me; it was not the eleven o'clock train, but it was an earlier train; I think the train which left here about six or half past six o'clock; I arrived in Albany about half-past eleven or twelve on the night before the election, with these papers.

Q. Will you state to the committee the first time you knew anything about the preparation of these papers, or that they were to be prepared, and state every thing you know in connection with that suit? A. Yes, sir; I knew nothing about the preparation of these papers as I recollect now; I had heard before the papers were prepared, that the books of the Albany and Susquehanna Railroad Company had been stolen from the office of the company, and I think Mr. Fisk had asked me what ought to be done; I am not sure whether I suggested such a course—the order of arrest, or not; but at any rate this was the day.

Q. What day was this? A. This was the day I got the order, either very late the night before or very early in the morning of that day, as I recollect it. I am not positive about this, for my memory has not been refreshed since that time. About three o'clock on the 6th I received a message from Mr. Fisk to come to the Erie office. I think he personally gave me the papers and requested me to apply to some judge for an order of arrest. I got into a carriage—the Erie office was then in West street, near Chambers, on the corner of Duane street—I got into a carriage and drove over to the Court House, and I found that the Chambers had adjourned, and that Judge Barnard, who was regularly sitting at Chambers, had gone home—had left there a few

minutes before I got there. I inquired if there was any judge in the Court House and was told that the judges had all gone and that there was no other judge there. I drove right up to Judge Barnard's house and if I recollect aright I saw him going up the steps as I reached his house. I rung the bell and sent my name in, and was shown into his room. I presented the papers to Judge Barnard. He looked at the title of the case and said he did not like to sign an order to arrest a lawyer. I told him it was a very outrageous case in my view of it, and I got him to let me read the papers to him—some charges in the papers. He then said he did not like to sign the order. I told him I wanted to have that order signed unless he thought it was illegal. He finally signed it. I took these papers with some other papers in some other suits and took the next train to Albany. I think the train left New York at half-past six o'clock and I arrived in Albany between eleven and twelve o'clock. I went to the room in the Delavan House, where the council of the Erie Railway Company were assembled and told them what papers I had.

BY MR. TILDEN.

Q. Who were assembled with the counsel? A. Mr. Field was there.

BY MR. STRAHAN :

Q. Mr. David Dudley Field? A. Mr. David Dudley Field, Mr. Church was there. I think he was not one of the members though he was one of the parties in interest—I believe that was his name—Mr. Church who was on our side.

BY MR. CURTIS :

Q. Was Mr. Ganson there? A. I think Mr. Ganson was there but I cannot tell exactly without reference, as it is so long ago. I have memoranda by which I could tell exactly who was there.

BY MR. STICKNEY :

Q. Have you that with you? A. No, sir, I have not.

Q. Go on and state all the circumstances as far as you can recollect them. A. I showed the papers to him. Mr. Field said that that order must be served as soon as possible in order that it should not interfere with the election. I had charge of the service of these papers. I found Mr. Conway—Mr. Martin D. Conway—who was a lawyer in Albany and acquainted with the sheriff there, which I was not, and I gave him these papers that night and told him to take the papers to the sheriff the very first thing in the morning and to see that he had them as soon as his office was open. Mr. Conway afterwards told me that he had given the papers to the sheriff at nine o'clock in the morning, and that the sheriff did not know what to do and wanted to have some instructions. I stated that I did not desire to give any instructions except that he should do his duty, and he went back to tell the sheriff that; he told me that he did. He afterwards told me that the

sheriff had gone to consult his counsel. That is all I had to do of importance until about half an hour before the election. I think the election was commenced at twelve o'clock. Then I went up to the Albany & Susquehanna office. I was present at the election. I do not know whether there is anything connected with that that you want.

BY MR. STRAHAN :

Q. The question includes the election and several days afterwards.

A. What I did ?

Q. Yes, the question is what was done. A. It is a long story as to what was done. I did not do anything. I was present at the meeting of the stockholders in one of the rooms of the building, and I listened to what was done in that room.

BY MR. STICKNEY :

Q. You need not tell every thing unless it is desired. A. I went in a little room between where the stockholders met and the room where the election was held, and stayed there until the election commenced by the Church Inspectors.

Q. The Church Inspectors were the Fisk and Gould Inspectors were they not ? A. I believe Fisk and Gould were interested in that matter through the Erie Railway Company—as directors of the Erie Railway Company.

Q. Did you see the Sheriff come there to the office ? A. I did not, but while I was in the middle room—the small room—I saw Mr. Ramsey and others giving bail.

Q. In which room was that ? A. It was the same middle room between where the stockholders held their meeting and the room where the election was held. Mr. Shearman was in there at the same time, and I heard Mr. Shearman say that he would consent to the bail offered, although they were not competent bail.

BY MR. TILDEN :

Q. What time of day was this ? A. This was within an hour—I should say between twelve and half past twelve o'clock, as near as I can judge.

BY MR. STICKNEY :

Q. Is that all you can remember in connection with the arrest ? A. That is all.

Q. You say Mr. Fisk had asked you your advise as to what had best be done in consequence of these books having been stolen, as you say. A. That is my recollection of it.

Q. Was that on the same day ? A. The same day as what ?

Q. The same day he gave you the papers. A. I said it was very late the night before or very early in the morning of the same day. I think I was with Mr. Fisk all night the night before that.

Q. You advised him to commence this suit ? A. That I could not say.

Q. As near as you can remember? A. If I had known what it was I would have told. I do not know whether I did or did not.

Q. What part did you take in the preparation of the papers? A. I believe none at all.

Q. Where were you when you received this message from Mr. Fisk? A. I think I was in my office—I am not positive.

Q. Where was your office then? A. Wall Street or Pine Street. It was not far from that time I removed from 25 Pine Street to my present number 50 Wall. I do not remember which office I occupied at that time.

Q. You say you found that Judge Barnard had left the Chambers of the Court and gone home? A. Yes, sir.

Q. He had been holding Chambers that day? A. Yes, sir.

Q. You don't remember who told you he had gone. Was it Mr. Beamish? A. I do not recollect. It was somebody there. I think some officer in the Court House.

Q. When you saw Judge Barnard you found him going in the door of his house? A. I think he was going up the steps. I know I got there about as soon as he got there. I think he was taking off his coat when I first stepped in.

Q. He said he did not like to grant an order of arrest against a lawyer? A. No, sir:

Q. Who was the lawyer—which one of the defendants? A. He named Henry Smith.

Q. What did you say, or what did Judge Barnard say? A. I said it was a very outrageous case, and I thought he ought to grant the order, and I wanted to read the papers to him, and he allowed me to do so.

Q. Did you read all through the papers—the entire papers to him? A. I cannot say that I read them all. I think I did. I know I spent some time there with him.

Q. To the best of your recollection you read the papers entirely through? A. Yes, sir; I do not recollect whether I read them all, but I read the material parts.

Q. Is that your impression? A. That is my knowledge, that I read the material parts of the papers. Perhaps some formal parts I left out.

Q. How long were you in Judge Barnard's house? A. Perhaps a half hour.

Q. You got there about what time? A. I got there as soon as I could drive from the Court House up to his house—three o'clock, or a very few minutes after three.

Q. Do you know what train you took? A. I left by the next train. I left by the train that arrived in Albany I think at 11.30. It was pretty near twelve o'clock when I got to Albany—when I got to the hotel.

Q. What other papers did you have that you took with you to Albany? A. I do not know—I have forgotten.

Q. Was anything said about the amount of bail to be inserted in the order? A. When?

Q. When you went to Judge Barnard's. A. I do not think so.

Q. Do you remember who suggested the amount of bail that was inserted in the order? A. I do not think anybody suggested it in my presence.

Q. Was it inserted by Judge Barnard? A. I can tell by looking at the order of arrest, but not otherwise.

Q. Is it the ordinary course for the Justice himself who grants the order of arrest, to insert at the time the amount of the bail? A. No, sir, it is not. In some cases it is, in other cases it is not.

Q. Do you remember whether it was done in this particular case? A. No, sir; I could tell by looking at the papers.

Q. Do you remember what the amount of the bail was? A. I do not.

Q. Are you sure whether or not anything was said about the amount of the bail? A. I am not sure whether there was or not.

Q. Did you think the amount—\$50,000—was too large? A. I should think it ought to have been more than \$50,000.

Q. Do you remember whether you requested that it should be more than \$50,000? A. I do not think I did request—it might have been. It may have been that I did, unless Judge Barnard had filled it out.

Q. Look at the original order, and see if the amount of bail is not in the same handwriting as all the other manuscript in the body of the order, except Judge Barnard's signature? A. I am not an expert, and I did not see the paper drawn; but it looks to me as if it might be.

Q. It looks to you like the same? A. It looks like the same, but it would take an expert, perhaps, to tell whether it is the same.

Q. In whose handwriting is that? A. It looks to me like the handwriting of Dudley Field.

Q. Do you know the names of the other orders you took at that time? Do you know whether or not you had an order in the suit of Stanton Courtor against the Albany and Susquehanna Railroad Co.? Did you have an injunction order? A. I think I did.

Q. What was it—the injunction enjoining the inspectors from acting? A. I do not recollect the terms of it. I do not think that was it. I know it was an injunction granted by Judge Clerke.

Q. Did you get that injunction yourself? A. No.

Q. Do you know who did? A. No, sir.

Q. Do you know what day it was granted? A. No, sir.

Q. Have you any information as to who obtained it? A. No, sir.

Q. Did you at the time of applying for that order, or just before the time of applying for that order of arrest, have any conversation with any one else but Mr. Fisk on the matter? A. I cannot say I did not, but I do not think I did. There was nobody else who had anything to do with it except himself, so far as my connection with it was concerned.

Q. Did you have any conversation with Mr. Shearman? A. I may have talked with him, but I did not care what he said, if I did.

Q. Do you remember any conversation with Mr. Dudley Field? A. I may have had a conversation with him.

Q. Do you remember stating in your former examination? A. I think I did now have a conversation with Mr. Field.

Q. Dudley? A. I think after I got the order I showed it to him, but there was nothing said connected with the procuring of the order of any importance.

Q. Do you remember what was said? A. No, sir. I do not recollect that I seen him afterwards.

Q. You stated that you told Mr. David Dudley Field what papers you had? A. Yes, sir.

Q. What papers did you mention? A. I did not mention any paper except the order of arrest. I said that I had some other papers, and among others the injunction.

Q. Did you show him the order of arrest? A. Yes, sir.

Q. Did he examine it? A. I do not know whether he examined it or not, but I told him what it was and I presume he may have examined it.

Q. He told you to be sure and have it executed early so as not to interfere with the election? A. He said it ought to be.

Q. Did you agree with him on that point? A. Yes, sir, I did.

Q. Did you take measures to carry that into effect? A. Yes, sir, I saw Mr. Conway that night. I stayed up until probably three o'clock, and I got Mr. Conway and told him to see that the sheriff got that the moment his office was open in the morning, and I repeated to him what Mr. Field had said, and I know that he did get it there the very moment the office was open as he told me.

Q. Did Mr. Field say anything to you to the effect that if the order could not be executed some time before the election it should not be executed until the election was over? A. No, sir.

Q. Did Mr. Shearman? A. No, sir.

Q. Did anybody give you directions to that effect? A. No, sir. Nobody had anything to do with that order except myself after the paper came into my hands. Mr. Shearman testified on the trial of the case at Rochester that he may have given some directions, but he was mistaken about it. He had nothing to do with it. I did that myself, and he had no more to say about it than the man in the moon had.

Q. Do you remember the plaintiff in that case? A. I can tell by looking at these papers.

Q. Inform us if you remember? A. It was the suit against Smith and these other people.

Q. Mr. Fisk was your client in the matter? A. No, sir; the Erie Railway Company was, and Mr. Fisk also. I was all the time Mr. Fisk's private counsel and it may have been in his name. I do not recollect whose name it was in now, but I could tell by looking at it.

Q. Was anything said, in the interview with Judge Barnard, about Mr. Fisk? A. No, sir.

Q. Was his name mentioned at all? A. No, sir, it was not.

Q. Or was the Erie Railway Company named by either of you at that interview? A. No party was mentioned unless they may have been parties to the suit.

Q. Had you applied for any other orders to Judge Barnard during the time of these proceedings as far as you remember? A. I do not remember of applying for any, but very likely I may have done so.

Q. Do you remember the order of injunction in the case of Wilber against Ramsay, suspending Mr. Ramsay? A. I recollect there was such an order.

Q. Do you recollect whether you got that. A. No, sir.

Q. Do you recollect that you got an injunction order in the case of Wilber against Phelps? A. I do not know.

Q. Do you know anything of the order appointing Mr. Fuller receiver of certain stock? A. I recollect there was such an order.

Q. Did you have any connection with that? A. I do not remember certainly about that, but I hardly think I got it though I may have got it.

Q. You know Mr. Fuller? A. I know him.

Q. Had he been acting with Mr. Fisk during this controversy? A. No, sir; not to my knowledge; I never knew that he was; I can moreover say that I think I would have known it if he had, because I was present at most of the consultations that they had; I think Mr. Fisk kept me advised of how things were going on, even when I was not present at the consultations.

Q. You say you gave the sheriff no instructions, or you told Mr. Conway to give the sheriff no instructions except that he should do his duty? A. No, I did not say that; I said that Mr. Conway came back and said that the sheriff wanted instructions, and I said I was not going to give him any; that he had got the order and he must do his duty, or something like that.

Q. Then you did not give the directions at that time which Mr. Field said you ought to give? A. Mr. Field didn't say anything of the kind; he said that the paper ought to be served early.

Q. You gave them no directions that it should be served early? A. Mr. Ramsey had his people around him pretty much all the time, and I did not desire to give instructions except that the officers should take the course of the law; I gave them the papers and let them look out for themselves; I wanted the officers responsible and not my clients for what was done; I told Mr. Conway that I wanted it made early.

Q. You did not give any instructions to that effect? A. I told Mr. Conway not to give the sheriff any other instructions.

Q. Have you at any other time seen Judge Barnard and Mr. Fisk in company with each other? A. Yes, sir.

Q. Have you seen Judge Barnard and Mr. Fisk at the Erie Railway's Company's office at any time? A. I have seen Judge Barnard there.

Q. Often? A. Not very often; I suppose I have seen him there a half dozen times.

Q. In Mr. Fisk's private office? A. In the office occupied by Mr. Fisk; but it was occupied by four or five gentlemen and with the doors open, between that and other offices; there were five or six in each room; I never saw them in private consultation.

Q. At what other place have you seen Judge Barnard and Mr. Fisk together? A. I do not think I ever saw them together anywhere else except there.

Q. Will you think for a moment? A. I may have seen them.

Q. Can you remember, after reflection, any other place where you have seen them together? A. Not now without refreshing my memory.

Q. Did you have any directions from Mr. Gould or any conversation with him in relation to this arrest suit? A. No, sir.

Q. Did you ever, at any time, with Mr. Lane? A. No, sir; I never saw Mr. Gould or Mr. Lane in connection with this matter to my recollection.

Q. Did you have any conversation with any one else? A. — although I often spoke to Mr. Gould about cases, and I may have mentioned this case to him, but I was hurried to get that in time to go to Albany, so that I scarcely took time to speak to anybody.

BY MR. CURTIS:

Q. Do you know what caused the sheriff to be so long that morning before he served that order of arrest? A. Mr. Conway told me that the sheriff wanted to go and consult his counsel, and that he could not find his counsel or something of that kind; I do not know of any other reason than that; I think I heard a rumor afterwards that some parties kept out of his way, but I do not know anything about it.

Q. Did you see the sheriff personally that forenoon? A. I never saw him in my life.

Q. You did not see him on that occasion? A. On that or any other to my knowledge; I may have seen him, but I do not know; and I would not know him if I saw him now.

Q. Did you know of any conspiracy, or concert, or agreement of any kind between Judge Barnard and Mr. Fisk or Mr. Gould, or either of them, to cause this arrest of Mr. Ramsey and the other parties named in the order? A. I do not know. I know that there were a good many orders—do you mean to cause the arrest of them?

Q. Yes, sir. A. I think Mr. Fisk knew the order was to be granted.

Q. What I ask you is if you knew if any combination or conspiracy, or concert between Judge Barnard and Mr. Fisk. A. I did not.

Q. When you obtained that order of arrest from Judge Barnard, did he seem to grant it readily or reluctantly? A. He granted it reluctantly, as I have already testified.

BY MR. STRAHAN:

Q. What do you mean by saying that Mr. Fisk knew the order was to be granted? A. He gave me the order. I talked with him about every thing to be done.

Q. You say he knew the order was to be granted. A. Not be granted. He knew that the order was to be applied for. Of course no man know whether an order is to be granted. I presume I told him it would be granted.

BY MR. CURTIS :

Q. When you pressed Judge Barnard to sign the order, didn't he say to you "Why don't you go to some other judge." A. I don't know; I presume very likely he did, because I know after he was satisfied that he ought to sign the order, he was quite reluctant, but I cannot say that he did tell me that.

Q. Did you not say to Judge Barnard that you came to him because you could not find any other judge? A. Yes, sir, I told him that—not exactly that—I told him that I had been to the Court House and could not find any judge there, and I apologized for coming to his house in the way I did. I did not tell him I could not find any other judge. Of course I could have found another.

Q. Is there any fact within your knowledge that leads you to suppose or justifies you in supposing that Judge Barnard could have the least earthly reason to refuse the application? A. No, sir. I should say that he expressed himself adverse to any application for the arrest of a lawyer. I know he expressed himself that way.

Q. Did he say any thing to you about his relations with any of the defendants named? A. He said Mr. Smith was a friend of his. He spoke particularly about Mr. Smith. His was the only name I recollect his speaking of at that time.

Q. In regard to the bail, how long a time was occupied there in taking the bail? A. Only long enough to draw up the bond. They consented to the bail right on the spot.

Q. Were either of these parties arrested removed from the building for a moment? A. Not to my knowledge. I know that they gave bail within a very few minutes of twelve o'clock—the bail which was agreed to by the counsel and attorneys.

Q. Were not the bondsmen offered, of counsel? A. I do not recollect who the bondsmen were. I recollect Mr. Shearman saying that that although they were not eligible he would consent to the bail.

Q. He took whoever was offered on the spot? A. He took the persons who were offered with that remark—the persons who signed the bond, making the remark that they were not eligible.

BY MR. STICKNEY :

Q. Here are the undertakings returned by the sheriff (producing a paper to the witness) will you say who the sureties on these three undertakings given by Smith, Ramsey, and Phelps are? A. Yes, sir. They are not the originals, are they?

Q. This is the official return of the sheriff, is it not?—look at the first paper there. A. I do not know, it appears to be, I presume it is. Henry Smith, David Groesbeck, and J. P. Morgan.

Q. Who are on the next? A. J. H. Ramsey.

Q. He was principal? A. Yes, sir, David Groesbeck and J. P. Morgan.

Q. Look at the other one—Mr. Phelps—who were his sureties? A. David Groesbeck and O. D. Ashley.

Q. Do you know who David Groesbeck is? A. Yes, sir.

Q. To be a poor man or a rich man as far as your information goes? A. I do not know anything about his financial condition.

Q. You never heard about it? A. I never heard about it.

Q. What is his reputation?

MR. CURTIS :

How is this important?

MR. STICKNEY :

It was insinuated that one of the sureties was of counsel.

MR. PARSONS :

And that the sureties were ineligible.

Q. What ineligibility did Mr. Shearman state? A. He did not state any.

Q. Do you know what ineligibility existed in relation to either of these sureties? A. I do not.

Q. Can you say he made any objection to the sureties? A. I would not accept them.

Q. You would not? A. I would not without examining them, in a case of this kind. If they would justify, I should allow the Court to accept them.

By MR. CURTIS :

Was not Ashley a clerk of Groesbeck? A. I do not know he is. I know there was such a man, and I think I saw him.

By MR. PRINCE :

Q. Do you know who J. Pierrepont Morgan is? A. I have heard.

Q. Is he not of the firm of Dabney, Morgan & Co? A. I do not know.

Q. Did you ever hear him say? A. Yes, sir, I have heard he was, but I am not acquainted with him.

By MR. CURTIS :

Q. Is it discretionary with the sheriff whether he would take persons out of the county as sureties? A. The sheriff has absolute discretion, of course, until the bail is justified on motion under the code. The objection of the sheriff may have been to the eligibility of the bail, for all I know.

Q. Was not every objection to these waived, and they were taken? A. I suppose he did.

By MR. STICKNEY :

Q. What did you say? A. I have testified that he said he would accept the bail, although not eligible, or words to that effect.

By MR. PRINCE:

Q. Mr. Groesbeck has the reputation of being worth a million or so of money, has he not? A. I do not know as I ever heard the amount. I have heard he was a rich man, but he is a stock broker.

By MR. HILL:

Q. When you saw Judge Barnard at the Erie Railway Company's office, was that before or after the granting of this order? A. I have seen him there since; I do not think I ever saw him before, I do not think I saw him there before that order was granted, when the offices were down town; I do not think I ever saw Judge Barnard at these offices, although I was there a great deal of the time; I spoke of seeing him at the office up town, on the corner of 8th Avenue and 23rd Street—the present office; I am not quite confident that I never saw Judge Barnard at the down town offices.

Q. Were they up town or down town? A. The offices they then occupied previous or about the time of the granting of these orders.

By MR. STRAHAN;

Q. You say you saw him at the offices about the time of the granting of these orders? A. I say I did not see him.

Adjourned to Saturday, February 9, at 10 o'clock, A. M.

NEW YORK, SATURDAY, March 9th, '72.

The Committee met at 10 A. M., pursuant to adjournment.

JAMES H. COLEMAN having been duly sworn, testified as follows; examined by MR. STICKNEY:

Q. Mr. Coleman, you are a counselor at law in this city? A. Yes, sir.

Q. Did you know Mr. Fisk intimately during his lifetime? A. Not intimately.

Q. For how long did you know him? A. I became acquainted with him some time in 1868.

Q. And saw him more or less frequently up to the time of his death, or nearly that time? A. Four or five times, I think, between 1868 and 1871.

Q. Do you remember anything about the Albany and Susquehanna Railroad litigation? A. I remember that litigation.

Q. Will you state to the Committee any facts or information that you may have in relation to it? A. I have no knowledge of any facts in reference to that litigation, save and except such knowledge and information as I derived from the newspapers.

Q. Do you remember the 6th of August, 1869, or the 7th of August,

which were the dates on or about which an order was issued by Mr. Justice Barnard, appointing Mr. Fisk and Mr. Courter the Receiver of the railroad? A. I remember that about that time the newspapers announced the fact that Judge Barnard had appointed Mr. Fisk and Mr. Curter Receivers of the Albany and Susquehanna R. R. Co.

Q. Do you remember, on the 6th of August, 1869, sending a telegram to Judge Barnard from your office in Nassau street, asking after the health of his mother? A. Yes, sir, I did.

Q. And informing him that certain matters in which Mr. O'Gorman had some interest, were postponed until Monday? A. Yes, sir.

Q. You remember that was Friday on which you sent that telegram, do you not? A. I won't be certain, but that is my impression.

Q. Did you receive a telegram in answer to that, from Judge Barnard, giving an answer to your inquiry after his mother's health? A. I think I received a reply, but am not certain.

Q. Did you send any telegram later during that day or evening to Judge Barnard, at Poughkeepsie? A. No, sir.

Q. Did you at any time during that day or evening send a telegram to Mr. Justice Barnard in these words, or nearly in these words: "Hon. G. G. Barnard, Poughkeepsie. Come to New York without fail to night. Answer, care 359 West 23d street, James H. Coleman?"

A. I sent no such despatch; I wasn't in the city on the evening of that day.

Q. How late on that day were you in the city? A. I think I started for Long Branch on the four o'clock boat; either the four or five o'clock boat; indeed, I was at Long Branch during the whole of that Summer, from July 4th, I think, to the first of September.

Q. You can state without any doubt that you did go to Long Branch that afternoon? A. I state it, sir, most positively.

Q. When did you return from Long Branch? A. I think I returned to the city on the following Monday.

Q. Are you quite positive on that point? A. I feel positive that I returned to New York on Monday.

Q. And you are perfectly certain that you didn't send any such telegram as that? A. Most positive sir; I swear to it most positively.

Q. And if it was sent, your name was used without your authority? A. Without my authority, knowledge, consent, or approbation.

Q. Did you receive on that same evening, August 6th, any telegram in these words, or nearly in these words:

"Poughkeepsie, August 6th: To James H. Coleman, care of 359 West 23d street: I will be there if sent by you. Answer. G. G. Barnard."

A. I received no such telegram; as I have stated, I was at Long Branch that night; that I swear to most positively; I was absent from Long Branch but one night during the whole of that Summer, and that was the night of the day that the mother of Judge Barnard was buried in Poughkeepsie; I went there with Judge Tracy, of the Marine Court.

Q. That was on Tuesday, the 10th of August? A. I think that was on Tuesday.

Q. By what train did you leave New York city, to go to Poughkeepsie, on that day? A. I think it was the 11 o'clock train in the morning.

Q. Do you remember what time you reached Poughkeepsie? A. About two hours after I started; I don't remember the hour of the day.

Q. I am very reluctant to ask you any questions about this, but am compelled to do so. At what time was the funeral of Mr. Justice Barnard's mother, in Poughkeepsie, that day? A. I think it was at three o'clock in the afternoon.

Q. Was it not at two o'clock? A. My impression is three, from the church.

Q. Did Mr. Justice Barnard go up on the train with you? A. No, sir, he was there at Poughkeepsie.

Q. Did you find Mr. Justice Barnard there when you went there? A. I saw him at Poughkeepsie, yes, sir.

Q. He was there before you? A. He was at Poughkeepsie that day; I saw him after my arrival.

Q. Do you remember at what time you took the train—was it the seven o'clock train back to New York? A. Think I arrived in New York about nine o'clock.

Q. And did not Mr. Justice Barnard return with you? A. He did.

Q. Where did you last see him that evening? A. At his house, I think.

Q. Did you go from the railway station with him to his house? A. That is my recollection.

Q. How long did you stay there? A. Upon my word I can't tell you that; I think I remained with him two or three hours after my arrival that night.

Q. Did you see Mr. John W. Sterling, of the firm of Fields & Shearman, at any time during that day or evening? A. No, sir.

Q. He didn't come to Mr. Justice Barnard's while you were there? A. I am certain I didn't see him there, and haven't heard that he was there.

Q. Were you with Judge Barnard during all the time you remained in the house? A. That is my recollection; yes, sir.

Q. So that Mr. Sterling couldn't have seen him according to your recollection, while you were in the house, without your knowledge? A. Yes, sir; the Judge might have gone to the door, and he might have seen Mr. Sterling and I not know anything about it.

Q. But is it your best recollection that he remained in the same room with you while you were there? A. My best recollection; yes, sir.

Q. Did any one, so far as you know, or were informed, present any orders to Judge Barnard for his signature during that day, after you left Poughkeepsie? A. Not to my knowledge.

Q. Have you any information that any one did? A. I have no

knowledge and no information save and except such as I have derived from reading the newspapers.

Q. Did Mr. Shearman see Judge Barnard at any time during that day as far as you have any knowledge? A. Not to my knowledge.

Q. So far as you have any information? A. Nor so far as I have any information.

Q. Have you stated already that so far as you have knowledge or information, no one presented any order to Judge Barnard for his signature after you saw him on that day? A. I so state now.

Q. Either at Poughkeepsie or New York? A. Either at Poughkeepsie or New York.

Q. Did I understand you, Mr. Coleman, that you were not, to the best of your recollection, in New York on Saturday? A. Well, that is a matter of recollection; I am not positive whether I was in New York or not; my impression is that I was not in New York on Saturday.

Q. To the best of your recollection did you see Judge Barnard at any time on Saturday, the 7th? A. I feel quite positive that I couldn't have seen him on that day.

Q. Or on Sunday? A. Or on Sunday.

Q. Or Monday? A. The Judge's family, I believe, started from Long Branch on Saturday; the Judge was not at the Branch on Monday, I think.

Q. He had been there during the greater part of the Summer? A. Yes, sir.

Q. You feel quite positive he was not there on Saturday or Sunday? A. I do.

Q. Or Monday? A. I am sure he was not there on Monday.

Q. Did you see him at any time on Monday? A. I think not.

Q. What is your best recollection on that point? A. My recollection is that I didn't see him.

Q. On what day did Judge Barnard go to Poughkeepsie? A. That I cannot tell you; I think the day prior to my sending the despatch inquiring as to the health of his mother; of course I am speaking from recollection; I am not positive.

Q. So far as you know did Judge Barnard remain in Poughkeepsie until the funeral of his mother? A. So far as I have any knowledge he did.

Q. Or information? A. Or information; as I have stated to you, I have no knowledge or information in relation to the Susquehanna litigation save and except such knowledge and information as I have derived from the newspapers.

Q. How near the 6th of August did you see Mr. Fisk or Mr. Gould? A. Well, I was in the habit of seeing them on the Long Branch boats mostly every day.

Q. Do you remember whether you saw either of them on Thursday or Friday? A. I have no recollection of having seen them on either of those days; about that time I was in the habit of seeing Mr. Fisk about every day on the boat.

Q. But you never authorized Mr. Fisk or Mr. Gould to use your name in the way it was used, if used, in connection with these telegrams? A. Never, directly or indirectly; so help me God.

Q. Or any other person? A. Or any other person; I felt very much outraged at my name being used; I never gave my consent in any way; I was not connected with the litigation in the slightest possible way.

Q. Did you speak to Mr. Fisk or Mr. Gould, or any one connected with the firm of Field & Shearman, or any other person, in relation to any such use of your name? A. No, sir; in no way, shape, form, or manner of any kind whatever.

Q. I mean particularly, now, at any time after the 6th of August, did you make any complaint of its having been done? A. I had conversations with a great many people in reference to those despatches; I denied that I ever sent them; I felt it was a great outrage that my name was used on that occasion.

Q. Did you ever say that to Mr. Fisk? A. Mr. Fisk and I hardly exchanged a word from the time of the sending of those despatches down to the time of his death.

Q. Did you to Mr. Gould? A. Not a syllable or word was exchanged with Mr. Gould on the subject.

Q. Was the reason that you didn't have intercourse with those gentlemen the fact that you had been informed that your name had been so used? A. Well, I felt quite sore about it, and I complained to several parties who had spoken to me in reference to it; Mr. Fisk and I never had any conversation in reference to these despatches, in any way.

By Mr. TILDEN :

Q. How did you know that your name was so used? A. By reading it in the New York *Herald*, sir.

Q. When? A. The day of the publication of the telegram in that paper.

Q. Was that about the time of the transaction? A. I think it was within a couple of days thereafter; I was reading the *Herald*, and I was greatly astonished to see the despatches published there, inasmuch as I had not sent them, and for the reason that I was at Long Branch on the night of the 6th.

Q. Did you make any inquiry as to how your name came to be used without your authority? A. No, sir.

Q. Make any complaint to anybody about it? A. Well, it was the subject-matter of conversation with several parties down there at the Branch at that time; I was asked if I had sent the despatches; I said no.

Q. Had you any information as to who did use your name? A. None, save and except such knowledge and information as I derived from the newspapers.

By Mr. STICKNEY :

Are you quite sure that you never made any complaint to Mr. Fisk himself on that point? A. I am quite positive.

By Mr. TILDEN :

Did you disavow the use of your name to Judge Barnard? A. I did, sir.

Q. How soon? A. As soon as I saw him.

Q. Where and when did you see him? A. I met him at Poughkeepsie the day of the funeral, I think.

Q. You went up there to attend the funeral? A. Yes, sir.

Q. You told Judge Barnard at that time that you had not sent those despatches and that your name had been used without your authority? A. That I had not sent the despatches, and that my name was used entirely without my authority, and I expressed my indignation at the time to the Judge.

Q. Did Judge Barnard appear to be surprised, at that time? A. Judge Barnard seemed to be astonished; he expressed his indignation; he said he never would have come to the city of New York, and would have paid no attention to a despatch of any kind, were it not that he supposed his family was sick, or that I was sick, or something the matter with me; and I think he stated to me that he sent a reply to my despatch, or the despatch that purported to come from me, saying that he would come if it was from me; and I believe a satisfactory answer was sent in my name, and that brought the Judge to the city.

Q. Did you receive that answer? A. Oh, no; I was at Long Branch; and I knew nothing about the dispatch.

Q. And you knew nothing about the reply to you, by that dispatch? A. Save as I saw it in the newspapers.

Q. The Judge said he never would have come down, except supposing the despatch come from you? A. He said nothing on earth would have induced him to come to the city were it not that he supposed the dispatch came from me; he said he supposed something was the matter with his family; I was looking after his family at the time; his family and children were at the Branch, as well as my family.

By Mr. STICKNEY :

Q. He said he had sent that answer to the despatch that he supposed to be yours. A. I so understood him to say, sir.

Q. And that he did come to the city that evening? A. That is my recollection.

Q. Did he tell you where he came to in the city? A. No, sir.

Y. Did he say that he went to the address which was given in the despatch that he received? A. No, sir.

Q. Did you hear from any one any intimation that he did go to the address which was given in the despatch that he received? A. No intimation from any person; I have read, of course, about these matters in the newspapers, and I have read Mr. Curtis' pamphlet; I think I have read a letter from Gen. Barlow.

Q. Did Judge Barnard tell you what he did after he came to the city on that evening? A. No, sir.

D. Did he mention to you the fact that he signed an order appointing Fisk and Courter Receivers of the Railroad, after he came on, on that despatch, to the city? A. No, sir.

Q. Did he mention to you what he did after he discovered that he had been imposed upon? A. No, sir.

Q. Did he ever say to you, or intimate to you, that he found fault with any person for having imposed upon him in that manner? A. No, sir, except so far as I have already stated; that he asserted that under no circumstances could he have been induced to come to the city, except he supposed the despatch to be genuine.

[Question Repeated.] A. No, excepting so far as I have already stated.

Q. Did he say to you that he had ever spoken to Mr. Fisk in relation to that despatch? A. No, sir.

Q. Or to Mr. Gould? A. No, sir.

Q. Did he mention any one's name, so far as you can remember, with whom he spoke in relation to that dispatch having been falsely sent under your name? A. No, sir.

Q. What house was No. 359 West 23d street? A. Upon my word I don't know, sir; I have never visited the house.

Q. Did M. Fisk ever state to you, or have you ever been informed that it was a house that Mr. Fisk was in the habit of visiting? A. I have been informed through the newspapers that Mr. Fisk had been in the habit of visiting there.

Q. Whose house have you been informed that it was? A. Well, it is my impression that it was the house of Helen Josephine Mansfield.

Q. Have you ever seen Judge Barnard and Mr. Fisk there? A. No, sir; I never visited the house.

Q. Have you ever seen them together in the office of the Erie Railway Co.? A. No, sir.

Q. Will you be so good as to state where it was that you had seen Mr. Fisk and Judge Barnard together prior to August, '69? A. I think I have seen them on the Long Branch boat together?

Q. Where else? A. I have no recollection of ever seeing them together at any other place.

Q. Are you quite confident that you never saw them together in any other place than on the long Branch boat in company, prior to 1869?

A. I am very positive and very confident.

Q. Had you not seen them together at Long Branch? A. I may have seen them speaking together at Long Branch; I am not positive, however, that I ever saw them together there.

Q. Speaking together where? A. I think on the piazza of the hotel.

Q. Have you any recollection of having seen them together at other places at Long Branch? A. I swear, most positively, that I never saw them together at any other place in Long Branch than at the hotel.

Q. Where did Mr. Fisk reside at Long Branch? A. I think he was

stopping at the Continental Hotel. I was not aware that he had any other residence except at the hotel.

Q. Had he rooms there? A. I think so.

Q. Did you visit him in those rooms? A. No, sir, I did not; I had very little to say to Mr. Fisk.

Q. Were you never in those rooms? A. Never in his rooms in my life.

By Mr. CURTIS:

Q. When you saw Mr. Fisk on board of the Long Branch boat, when Judge Barnard was on the same boat, were you present at any conversation between them? A. I have no recollection of ever having been present at any conversation between Judge Barnard and Mr. Fisk.

Q. You don't recollect ever overhearing any conversation between them? A. No, I most assuredly do not.

Q. Prior to the 10th of August, when this supposed despatch was supposed to have been sent, falsely, in your name, were you and Mr. Fisk on speaking terms? A. I think we were on speaking terms, but we were not friendly.

Q. Not friendly? A. Not friendly; that I swear to positively.

JOHN W. STERLING, having been duly sworn, testified as follows; examined by Mr. STICKNEY:

Q. You are a member of the firm of Field & Shearman? A. I am, sir.

Q. Do you remember what was the first matter you had anything to do with in the Albany and Susquehanna Railroad litigation in the Summer of 1869? A. I think, sir, it was the appointment of a Receiver for the Albany and Susquehanna Railroad Company.

Q. Do you remember anything about the two Wilbur suits—the one of Wilbur against the Company, and the one of Wilbur against Phelps? A. I remember something about it.

Q. Do you remember whether you had anything to do with the preparation of the papers or the procuring of the injunctions in these suits? A. I had something to do with the preparation of the papers; I don't now remember whether I had anything to do with the obtaining of the injunctions; if the papers were shown me, perhaps I might tell.

Q. Will you begin and state to the Committee, so far as you now recollect from the earliest point of which you have any recollection, all matters that you did or had personal knowledge of, or information of, in connection with that litigation, giving them in the order of time? A. I cannot do that, unless the papers are shown me to refresh my memory.

Q. Can you not do it at all? A. I can give certain parts of it.

Q. Give all you can—what you have a recollection of? A. I think it was on the evening of the 6th of August that I was sent for to come

up town ; I arrived up town about eight, or a little after, in the evening, and then saw Mr. Shearman in a little room in the Erie Railway building, on the first floor, a room to which I had never been before.

Q. That was the Opera House? A. The building that contains the Opera House ; a number of persons who were pointed out to me as Directors of the Albany and Susquehanna Railroad Company were present.

By Mr. TILDEN :

Q. Who sent for you? A. I don't know from whom the message came, but it was at the instance of Mr. Shearman, I believe, I went up town ; Mr. Ensign was there, who was then our managing clerk, and Mr. Shearman was busy in drawing papers and consulting different gentlemen ; I assisted him ; I think I drafted some of the papers ; I think I drafted, later in the evening, the undertaking for the appointment of the Receivers ; I worked in that way until about a quarter past ten, and was then told by Mr. Shearman that he desired me to get an order for the appointment of a Receiver, a copy of which he then handed me, and also informed me that I should have to go to Albany, probably in the next train, which started at about 11 o'clock ; this was on the evening of the 6th of August ; I started at once with the paper and the consent of the Directors, and the undertaking, complaint and summons, out of the building, and was about to take a carriage to go to the Judge to get the order ; I proposed to go to Judge Barnard, he being the nearest ; just before I reached the carriage, a person met me in the street, and asked me where I was going ; I was in a very great hurry ; I told him I was going to try to get an order appointing a Receiver from Judge Barnard ; he says to me, " I know where Judge Barnard is," or " I can find him," something like that, and I followed him along, and went into the second house from the Grand Opera House ; I went in and saw the Judge, explained to him the papers, and read them to him, and he read them over himself ; he signed the order, and I think he approved the bond ; I started immediately back to this room, where I had left Mr. Shearman, and showed him the papers ; it was then a very few minutes of 11 o'clock ; he asked me then to go to Albany at once, and I jumped into the carriage and started on the 11 o'clock train, the train that left here about 11 o'clock in evening.

By Mr. PRINCE :

Q. Do you know who it was that you met when you came out? A. I didn't recognize him then, sir ; it was a familiar voice, but I didn't recognize his name ; I came out from the building, where there were bright lights, in great haste, on the sidewalk, and then, as I was getting in the carriage, he met me, and I followed him at once, he saying that the Judge was near.

Q. Do you now know who it was? A. Yes, sir.

Q. Who was it? A. His name is Fowler ; I don't know what his christian name is.

Q. Do you know his business? A. I can identify him, and find out his christian name.

By Mr. STICKNEY:

Q. Where does he do business? A. I don't know, sir.

Q. Do you know what his business is? A. I do not, sir.

Q. Do you know anything about who he is, where he lives, or what his occupation is? A. I don't think he has any occupation.

Q. How do you propose, then, to be able to find him? A. By inquiring for him.

Q. From whom? A. Well, I might inquire from a great many persons.

Q. From whom do you expect to inquire to find out where he is? A. I can't say, now; I had seen him often, but didn't know his name at the time, and it wasn't until after a year afterward that I ever inquired or thought anything further of it; I have seen him a great many times, and met him in the street.

Q. Where had you seen him previously? A. I can't now remember, sir.

Q. Where have you seen him since? A. In the stage.

Q. No where else? A. I often met him in the street.

Q. Have you seen him in any house or building? A. I think I have seen him in the Erie Railway building.

Q. How lately have you seen him at the Erie Railway building? A. Not very lately.

Q. How lately? A. I can't remember the last time I saw him at the Erie Railway building.

By Mr. TILDEN:

Q. Did you recognize him at the time he addressed you in the street? A. I didn't at that time know his name; I recognized him as a person whom I had frequently seen, and I recognized his voice.

Q. How did you come to communicate so frankly with a person you knew so little of? A. Because his face was very familiar to me, and I knew that all the persons about there were friendly to us.

Q. You would have regarded the fact of your purpose to get an order as rather of a confidential nature, wouldn't you? A. Yes, sir; I should.

Q. You would have thought it necessary to a prudent and successful conduct of the business, that it should not become public? A. Yes, sir.

Q. What I wanted to inquire was, how, meeting a person of whom you knew so little, whom you scarcely recognized, and whose name you didn't know, in the street, you should communicate an affair that people usually conduct with great reserve and privacy? A. There are a great many persons whom I know very well—that is, who are on very good terms with me—whose names I do not remember, or whose name I might not remember at the time.

Q. What knowledge had you, or what circumstances existed, that

commended him to your confidence? A. I have already stated, sir, that his face was very familiar, and I had seen him frequently, and in the hurry of the moment I told him what my errand was.

By Mr. PRINCE:

Q. You recognized him, then, as some one you supposed to be friendly to the interests of the Erie Railroad? A. Yes, sir.

By Mr. TILDEN:

Q. You wouldn't, ordinarily, meeting a person in the street, when you were on a mission to obtain an injunction, communicate your business? A. No, sir.

By Mr. NILES:

Q. Did you communicate any more to him than the fact that you wanted to see Judge Barnard? A. No, sir; and to get an order.

Q. What sort of an order? A. I don't think I stated.

Q. My recollection is that you stated that you wanted to get an order for the Receivership? A. If I did, it was merely to identify the order; I don't mean to be understood as saying that I said that to him; it was merely for the purpose of identifying the order to you.

Q. You say you went to a house the second door from the Opera House? A. Yes, sir.

Q. What was the number of that house? A. I don't remember now, sir.

Q. Do you know of any way by which you can identify the house? A. Yes, sir; I think that sufficiently identifies it.

Q. Do you know whose house it was? A. I didn't know at that time.

Q. Do you know now? A. I have been informed, sir.

Q. Whose house was it, or is it? A. It was occupied at time, I have been informed, by Mr. Cole.

Q. Who is Mr. Cole? A. Mr. Cole is at present, I think, the lessee of the Opera House.

Q. Do you now know the number of the house? A. I do not, sir.

Q. Does Mr. Cole's family live in the house? A. I have no knowledge, sir.

By Mr. STICKNEY:

Q. What is Mr. Cole's first name? A. I think it is John F.

Q. Who told you that it was occupied by this Mr. Cole? A. I don't remember now, sir.

Q. When were you told that it was occupied by Mr. Cole? A. Soon after certain letters written by Mr. Barlow appeared in the newspapers.

Q. Have you any recollection who told you it was occupied by Mr. Cole? A. I have not.

Q. What kind of a house was it, to appearance—a dwelling-house? A. A dwelling-house.

Q. Not a real estate office? A. It may have been a real estate office, inside.

Q. But there was no appearance of it being a real estate office? A. I didn't notice the inside of the house; I was so much engaged thinking about the order, and the papers that I went in and came out without particularly remarking the appearance.

Q. Was there a desk or counter there? A. I don't remember a counter; I remember a table.

By Mr. NILES:

Q. Was there a stoop to the house? A. The stoop wasn't very high; I went up to the stoop.

Q. Was there any appearance of this house, where you went, being a real estate office? A. I have stated that I didn't pay any attention to the furniture or appearance of the room, for I was so much engaged in thinking of the order and the papers, and the facts of the case.

Q. There is a great deal of difference in the appearance of a room in an ordinary dwelling house and the appearance of a real estate office, is there not? A. I suppose there is.

Q. Do you mean to say you have no recollection as to which of the two it was? A. I stated exactly what my recollection was.

Q. What is the number on 23rd street, of the Opera House? A. I don't know.

Q. Have you any knowledge or information that this was 359 West 23rd street? A. I have sir; I have particular knowledge it was not 359.

Q. But you are ready to testify positively that you went into a house to get that order signed, which was two doors west of the Opera House? A. I am sir, positive.

Q. On the north side of Twenty-third street? A. North side of Twenty-third street.

Q. Is that the only house into which you went, between the time you left the Erie Railroad office, to get that order signed, and the time you returned there? A. It was the only house.

By Mr. TILDEN:

Q. What room did you go into? A. Into a back room on the first floor.

Q. Was it apparently a parlor, or dining room? A. Well, I can't state any further than I have stated, sir.

Q. Did you enter it through the front room or through the hall? A. I can't distinctly remember, but I think it was through the hall.

Q. Whom did you find in that room? A. I saw two or three gentlemen and Judge Barnard.

Q. Who were the other gentlemen? A. I don't remember, sir; I remember merely the fact that there were gentlemen there and Judge Barnard; as soon as I saw the Judge I made known to him exactly

my business, and after that came immediately away, for my time was very short.

By Mr. STICKNEY :

Q. Do you not remember that you did know one or more of the gentlemen who were in the room with Judge Barnard? A. I don't remember, sir.

Q. Wasn't Mr. Fisk there? A. I don't remember.

Q. Refresh your memory as well as you can, please, and tell whether or not Mr. Fisk was there? A. I have refreshed my memory as well as I can, and I can't remember.

Q. Can you state that he was not there? A. I don't remember.

Q. When Mr. Shearman gave you this order, what did he say? A. He asked me to get the order signed.

Q. Where did he tell you to go? A. He didn't tell me where to go, if I recollect rightly, sir.

Q. Are you positive on that point? A. Yes, sir ; I think I am.

Q. Where did you expect to go? A. To Judge Barnard's house.

Q. Why did you expect to go there? He was the nearest Judge, and he has granted previous orders and he was acquainted——

Q. Did you meet Judge Barnard in the street? A. I don't think I did.

Q. How positive are you on that point? A. Quite positive.

Q. You are quite positive that you didn't meet him on the street, and go into the nearest house which was then open, which appeared to you to be a real estate office? A. I have stated to you, Mr. Stickney, exactly what it appeared to me.

Q. Then the first you saw Judge Barnard was seeing him in that room? A. Yes, sir.

Q. Will you refresh your memory once more and tell if Mr. Shearman gave you any address as to where you would find Judge Barnard? A. He gave me no address where I should find Judge Barnard.

Q. He gave you no directions as to where you should go to find Judge Barnard, or get the order signed? A. No, sir.

Q. You are positive on that point? A. I am positive.

Q. Who went with you when you took that order from Mr. Shearman to get it signed? A. I went alone.

Q. Are you positive on that point? A. Certainly.

Q. Where did you leave Mr. Shearman when you went to get the order signed? A. In the room where I had been with him during the evening.

Q. Which room is that? A. The room I have previously described.

Q. You didn't name the room? A. I cannot name it.

Q. Was it the Treasurer's office in the Grand Opera House? A. I don't know the Treasurer's office in the Grand Opera House.

Q. Will you state whether or not this was the Treasurer's office in the Grand Opera House? A. I have answered that question once.

Q. You cannot answer it? A. I don't know ; it was a room on 23d street in the southwest corner of the building on the first floor.

Q. Was this a portion of the Erie Railway office? A. That was a portion of the Erie Railway building.

Q. But are not the railway offices up stairs, further to the left on the street? A. Some of the railway offices are up stairs and some, I think, are at present on the same floor.

Q. Was not this room where you left Mr. Shearman on the left of the general entrance of the Opera House? A. It was.

Q. Down stairs? A. Yes, sir.

Q. And you are positive that no one went with you from that room when you left Mr. Shearman? A. I am certain of it.

Q. Did Mr. Fisk go with you from that room? A. He did not, sir.

Q. You are positive on that point? A. I am sir.

Q. Did you see Mr. Fisk in that room when you left? A. I don't recollect seeing him until I got upon the train that night.

Q. How long were you in that room before you left it? A. I think I was there two hours, sir.

Q. Was Mr. Fisk in that room while you were there during those two hours? A. I don't recollect seeing him there.

Q. Can you state positively that he was not there? A. I can't state positively, except as I have already stated.

Q. Was Mr. Gould in the room during those two hours, at any time? A. I don't recollect having seen him there during that time.

Q. Can you state positively that he was not there? A. I can't state positively.

Q. Give the names, to the best of your recollection, of all the gentlemen who were there during that time. A. I think there were seven Directors of the Albany and Susquehanna Railroad, Mr. Shearman, Mr. Ensign, Mr. Redfield, of the firm of Barrett & Redfield.

Q. Was David Wilbur there? A. I don't think he was.

Q. Was Jacob Leonard there? A. Let me see the original consent, appointing the Receiver, or a copy of it, and I think I can identify the persons who were there.

Q. I wish to test your recollection, Mr. Sterling, and prefer to conduct the examination in my own manner? A. I wasn't personally acquainted with those Directors; I saw them sitting there and I know those persons were there who signed the consent, for I saw them doing it.

Q. To the best of your recollection, was Mr. Leonard there? If you have no recollection, state so at once, and that will be the end of the question. A. I think Mr. Leonard was there.

Q. Was Mr. Samuel North there? A. I think so.

Q. Alonzo Everts? A. I think so.

Q. Azro Chase? A. Yes, sir.

Q. Charles Courter? A. Yes, sir.

Q. J. R. Herrick? A. Yes, sir.

Mr. NILES:

Q. You stated that you didn't know these Directors at that time? A. I was introduced to them, but I didn't know them previously.

Q. That is, the gentlemen just named? A. Yes, sir.

Q. You might have been deceived at that time as to who the gentlemen were that were present? A. I don't know; I was then introduced to them.

Q. Have you, since that time, come to know them? A. I know Mr. Herrick and Mr. Courter.

Q. Are Herrick and Courter, as you now know them, two of the persons who were there at that time? A. Yes, sir.

Q. That you are sure of? A. Yes, sir.

By Mr. STICKNEY:

Q. Was Frederick A. Lane, a Director of the Erie Railway Company, there? A. I don't remember seeing him there, sir.

Q. The bond was executed about how long before you left to get that order signed? A. I think just before.

Q. Before Mr. Ensign, was it not? A. I don't remember seeing it executed.

Q. Will you look at the original bond now shown you, and see the names of the parties who executed it before Mr. Ensign, and state if that refreshes your recollection as to the parties who were then in that room? A. Merely as to Mr. Leonard and Mr. Courter.

Q. The bond was executed in that room, according to the best of your recollection? A. I can't say positively.

Q. According to the best of your recollection? A. I have no recollection on the subject.

Q. What is your belief? A. I decline to state my belief.

(Question repeated.)

A. I have answered that question, as far as is proper.

Q. This bond being shown you, and there appearing on it the names of James Fisk, Jr., and Jay Gould, as parties executing it, have you any recollection of their being present in that room where Mr. Shearman was, at any time during that evening? A. I have no recollection.

Q. Look at the first two lines of the bond, and see in whose handwriting the words "James Fisk, Jr.," are. A. In my own handwriting.

Q. Have you any recollection whether James Fisk, Jr., was in that room? A. I have not, sir.

Q. In whose handwriting is the greater portion of the body of that bond? A. The most of it is in my own handwriting; some of the names were filled in by Mr. Shearman.

Q. Won't you state just what words are not in your handwriting? A. The word "administrators," on the ninth written line, and the words "Charles Courter and James Fisk, Jr.," in the middle of the first page; the names of Jacob Leonard and Jay Gould, at the commencement of the second page; the names of James Fisk, Jr., Charles Courter, Jacob Leonard, and Jay Gould, a little below the middle of the second page, are, I think, in Mr. Shearman's handwriting.

Q. And the bond was executed and filled out in full before you left

the room where Mr. Shearman was? A. I think so, sir; I didn't see the execution of the bond—that is, the act of execution.

Q. Did you examine it before you submitted it to Judge Barnard?

A. I submitted it to Judge Barnard, and I casually examined it.

Q. Do you know whether the body of it was perfectly filled up before you took it to Judge Barnard to execute it? A. It is my impression that it was; it seemed to be fully executed.

Q. That is your best recollection? A. That is my best recollection.

Q. And the portions here that are in your own handwriting were written after you got to that Erie Railway building, were they not?

A. They were written before I left the Erie Railway building to get the order.

Q. And after you first came there? A. After I first came, in the early part of the evening.

Q. What is your best recollection as to whether or not the order was filled out and perfected, except as to the Judge's signature, before you left that building, and before you saw Judge Barnard? A. I don't now remember doing anything to it after I left the building; if the original order is shown me, perhaps I can answer.

Q. Do you remember that anything was added by any person after you left the building, except the Judge's signature by himself? A. I don't now remember that there was.

Q. Look at the original order now shown you, appointing the Receivers, and state whether you are not positive on that point—that the order was as you now see it when you took it from the Erie Railway building, except as to the Judge's signature? A. I believe it is exactly the same as when Mr. Shearman handed it to me, with the exception of the signature.

Q. Particularly, were the names of the Receivers inserted, as they now are, when Mr. Shearman gave you the order? A. I think so.

Q. You have no doubt on that point, have you? A. I have no doubt about it.

Q. And the body of the order is in Mr. Shearman's handwriting, is it not? A. Yes, sir.

Q. You say Judge Barnard read through the papers when you presented them; did he? A. Yes, sir; I started to read them, and I did read them through to him, and he read them over himself, in addition.

Q. In whose handwriting is the body of the Chase complaint, now shown you? A. There are two complaints in the Chase suit—the original and supplemental; that is the original; I cannot swear positively as to the handwriting of that complaint, except that the endorsement of the title, "Summons and Complaint," Plaintiff's Attorneys, and the word "Original," upon the back of the paper, are in my handwriting.

Q. That portion of the endorsement on the back, "August 6, 1869, G. G. B.," is in whose handwriting? A. Judge Barnard's handwriting.

Q. Do you know in whose handwriting those initials, "R. B. H." or "R. B. A.," on the outside of the bond, are? A. I don't know.

Q. Did you personally attend to the filing of the bond? A. I did not, sir.

Q. Have you any knowledge as to who did file it? A. I have not, sir.

Q. Did you hear anything said, while you were there in the Erie Railway building that evening, as to Judge Barnard having been telegraphed for from Poughkeepsie? A. I did not, sir.

Q. Did you have any information from any one that Judge Barnard had been, during that day, in Poughkeepsie? A. I had not the slightest idea.

Q. How far outside of the door—the outer door—had you got when you met this individual that you have mentioned? A. Getting into a carriage.

Q. Was his name Fowler or Fuller? A. Fowler.

Q. Had you seen him that evening before? A. I think not, sir.

Q. When had you seen him before? A. I can't recollect, except as I have before stated.

Q. And you have no recollection where you had seen him before? A. I can't now recollect with any definiteness.

Q. Had you seen him before in connection with the Erie Railway Company's business? A. I can't recollect, sir; nor can I recollect when or where I had seen him.

Q. Had you been in the habit of seeing him in the Erie Railway Company's offices? A. I don't think I had, for I was not in the habit of going to the Erie Railway office.

Q. Did you speak to him first, or he speak to you first? A. He spoke to me first.

Q. What did he say? A. I have stated all what he said; I don't propose to be answering the same question over and over again.

Mr. STICKNEY:

I ask the Committee to direct the witness to answer the question.

Mr. PRINCE:

I recollect the witness's giving a general account of what occurred that evening, but I don't recollect that his attention was called specially to this point.

WITNESS:

He asked me, in substance, where I was going; I can't swear positively as to the exact words.

By Mr. STICKNEY:

Q. And then what did you say? A. I have already answered that question.

Q. As near as you can tell, what did he say? A. I can't swear positively to the exact words.

By Mr. STICKNEY :

Q. What did you say to him? A. As I have already stated, I told him I was going to get an order from Judge Barnard.

Q. Then what did he say to that? A. He said he could find him, or that he was near—something to that effect.

Q. Then what did you say? A. I don't remember saying anything.

Q. You went away? A. I went away.

Q. Had you been told you would meet any one outside of this building? A. I had not.

Q. Did he go with you into the house? A. He did.

Q. And into the room? A. I don't remember. As soon as I caught sight of Judge Barnard, I don't know what became of him.

By Mr. NILES :

Q. Did you understand that he had been waiting for you? A. No, sir; as a matter of fact, it was the purest accident in the world. This is not testimony, as I understand it.

By Mr. STICKNEY :

Q. Was it an accident entirely, as far as you know, your meeting this person? A. The purest accident in the world, as far as I was concerned.

Q. How long were you absent from the room, between the time when you took that order from Mr. Shearman and returned it to him? A. I should think fifteen or twenty minutes; I can't state positively.

Q. What took place immediately after that? A. Immediately after what?

Q. Your return to the room where Mr. Shearman was? A. I showed the paper to Mr. Shearman.

Q. What did he say? A. I don't recollect.

Q. What did you say? A. I don't remember.

Q. Do you remember whether you saw Mr. Fisk there when you got back with the order? A. I don't remember seeing him in the room that evening.

Q. Where did you see him, the first time that you remember, after you got the order signed by Judge Barnard? A. The first I remember seeing him was at the Hudson River R. R. depot that evening.

Q. What time did you leave the Opera House for the railway station? A. I can't state the exact time, but just in time to get on board the train.

Q. Are you confident on that point, that Mr. Fisk was not in the room when you got back with the order? A. I am not confident; all I state is, I can't recollect seeing him there that evening.

Q. Are you sure you didn't see him before you got to the railway station? A. I don't remember seeing him before I got to the railway station.

Q. Are you sure on the point? A. I am not positive; that is the best of my belief in the matter.

Q. Did you remain with Mr. Shearman all the time, until you left the Erie building? A. I think I did.

Q. Did you not go in the same carriage in which Mr. Fisk went from the Opera House building to the railway station? A. I don't remember driving in the same carriage with him.

Q. Are you positive whether you did or not? A. I am not positive, but I don't think I did.

Q. Were you present on the trial of the case of *The People vs. Albany and Susquehanna Railroad Co.*? A. I was not.

Q. You were not during any of the time? A. I was there for a few moments.

Q. Where did you go on your arrival at Albany? A. I went to the Delavan House.

Q. You saw Mr. Fisk there, I suppose? A. I did.

Q. Who went with you, to the best of your recollection, with yourself and Mr. Fisk? A. Several of the Directors, Mr. Ensign and Mr. Fisk.

Q. Did Mr. Stevens go up? A. I don't remember Mr. Stevens.

Q. Do you know Orange H. Stevens? A. I know who he is. Yes, I know him.

Q. Do you remember whether he went up with you at that time? A. I do not.

Q. Do you know Henry L. Mangan? A. I do not.

Q. Was not one Henry L. Mangan with you in Albany during that time? A. Not to my knowledge. I didn't know any such man. I don't know any such man by name.

Q. Did any one by the name of Mangan come up to Albany at that time? A. I don't know.

Q. Did Mr. Gould come up at that time? A. I don't remember.

Q. What was the first thing you did after you got to Albany? A. Copied papers.

Q. What paper was it? A. I think it was this Receiver's order and the complaint; the papers on which it was based.

Q. Where did you make those copies? A. In the Delevan House.

Q. What did you do then? A. After the papers were copied, I proceeded with Mr. Fisk to the office of the Albany and Susquehanna Railroad Company.

Q. What took place then? A. We took possession of the offices.

Q. Did you keep possession? A. We took possession of the office, if I remember rightly, about eight o'clock, or a little before—not far from eight. At any rate, I am positive it was before nine; and after I was there a little while, I left and went back to the hotel.

Q. What took place before you left and went back to the hotel? A. There was loud talking and boisterous conduct.

Q. Did you see Mr. Fisk put out of the office? A. I didn't actually see him put out.

Q. Were you told he had been? A. Yes, sir.

Q. Who were you told put him out, or made any opposition to him?

A. I think one Van Valkenberg, and a person who assumed to be a deputy sheriff.

Q. Do you know what his name was? A. I don't now recollect what his name was.

Q. You had no personal knowledge as to that effect yourself? A. I had not.

Q. Did you send a telegram to Mr. Shearman? A. I sent many telegrams.

Q. On the 7th of August did you send a telegram to Mr. Shearman, informing him that violent opposition had been made to the Receivers, Fisk and Courter, in the discharge of their duties? A. I think more than likely.

Q. What is your best recollection on that point? A. On what point?

Q. As to whether you sent him such a telegram as I have described. A. I sent him many telegrams, and my telegrams contained the best information I could obtain in reference to the proceedings in Albany.

Q. What is your best recollection of sending him a telegram of the nature that I have described? A. I think it is more than likely I sent him one.

By Mr. NILES :

Q. What is your best recollection? A. My best recollection is, I did.

By Mr. STICKNEY :

Q. Did you mention any names, in the telegram, of persons who had made opposition to those Receivers? A. I can't now recollect.

Q. You have no recollection whether you did or not? A. I am not positive.

Q. Did you mention, as far as you recollect, the name of Campbell Allen? A. I think I did tell him something about Campbell Allen.

Q. As far as you remember, did you mention the name of Van Valkenberg? A. I think so; I think I mentioned the names of those persons who were named as co-defendants in the amended complaint. I have not looked at the papers since then.

Q. Did you, by telegram, inform Mr. Shearman that Mr. Chase desired a supplemental complaint to be filed in the Chase suit? A. I think I did.

Q. Did you inform Mr. Shearman, by telegram, that he desired that complaint to be filed for the purpose of preventing further interference with the Receivers, to the best of your recollection? A. Desired to be filed for that purpose?

Q. Filed and served? A. I think so, yes.

Q. Did you inform him, by telegram, as far as you recollect, that unless an injunction was speedily granted, restraining further interference with those Receivers, and, unless a writ of assistance issued to place them in possession, that those receivers would probably be ejected by force, and be unable to discharge their duties as such? A. I

don't know that I mentioned to him the word, "writ of assistance," but I think I stated to him by telegram the substance of what you have stated to me.

Q. You notice that Mr. Shearman, in his affidavit, stated that you did so inform him by telegram. Look at the affidavit now being shown you, and see if that refreshes your recollection as to whether you did so inform him by telegram? A. I think I communicated the substance of that affidavit to him.

[Affidavit of Mr. Shearman forms part of the papers marked "Charge 2 H."]

Q. When did you see any copy of an injunction order that was granted on that day, or purported to have been granted on that day, the 7th of August, Saturday? A. I don't recollect now, the time I saw it.

Q. Did you not see what purported to be a copy of an injunction order in the suit about 3 or 4 o'clock in the afternoon? A. I think very likely.

Q. What is your best recollection on that point? A. If you show me the writ of injunction, I think I can perhaps remember. I think I saw that in the course of the day.

Q. As to the hour, what is your best recollection? A. I think very likely I had a copy of it as soon after it was granted as it could be telegraphed.

Q. Is it your best recollection that you did receive a copy of it by telegram? A. I think I did.

Q. Did you receive, also, a copy of a writ of assistance issued in this Chase suit by telegraph? A. I think I did.

Q. Have you, at your office, or has your firm, the original writ of assistance that was granted on that day, or a copy of it? A. I cannot now say. I have not looked at the paper since that time.

Q. Mr. Dudley Field was subpoenaed to produce that paper, or a copy of it. Will you have that examination made, and, if found, will you produce a copy of that paper, or the original, to the Committee? A. I think probably he has done it already. I have no objection to doing it.

Q. What was done with those copies of that injunction order and of that writ of assistance which were received by you by telegraph? A. I have no personal knowledge of what was done with the copy of order.

Q. Or with the copy of the writ of assistance? A. No personal knowledge, except that I may have given a copy of it to Mr. Hamilton Harris. I am not quite certain that I did.

Q. But they were sent by telegraph to you? A. I think I received copies by telegraph.

Q. Do you recollect whether you went with Mr. Hamilton Harris to the railway office in company with the Sheriff?

Mr. NILES:

Do you intend to show that Judge Barnard was a party to any ir-

regular thing that was done with those orders, after they got to Albany?

Mr. STICKNEY:

I don't know that we can prove that; but we intend to show this—(as the members of your Committee are aware, there has been a decision in the Supreme Court of this State)—that there was a conspiracy. I will read the words so that there can be no mistake.

Mr. CURTIS:

Which has been reversed at the General Term.

Mr. STICKNEY:

It has not been reversed at the General Term. The decision was that there was a conspiracy to carry this election by the use and abuse of legal process and proceedings. We shall show the whole of the facts in their order as they took place, in what has been judicially decided to have been a conspiracy, and we shall show clearly, as we think, that those orders that were granted were of so outrageous and unwarranted a character as to make the Justice who granted them a party to that conspiracy. And as a portion of the conspiracy, if our evidence be such as we think it is, I think we are entitled to show every thing that was done under those orders.

Mr. NILES:

Did Judge Barnard make any orders upon information of what was done in Albany on this telegraph copy of an order.

Mr. STICKNEY:

Yes, he did.

Mr. CURTIS:

Further orders after granting the writs of assistance, and they were sent up there for execution.

Mr. STICKNEY:

Undoubtedly he did.

Mr. NILES:

You meant to say after this conspiracy developed itself up there, which you don't pretend he knew anything about in the first instance, as I understand you.

Mr. STICKNEY:

That will be a matter of inference.

Mr. NILES:

After it developed itself up there, it had come to his knowledge, and he continued to aid it.

Mr. STICKNEY :

By every means in his power. It is almost an impossibility unless you have a party turn State's evidence, to show all the facts as they actually occurred under any conspiracy, but we shall show such circumstances as we think will render justifiable the conclusion that Judge Barnard was a party to this conspiracy.

Mr. NILES :

Can you promise protection to Mr. Sterling and Mr. Field.

Mr. STICKNEY :

I don't think that they make it necessary.

WITNESS :

I don't think it is material what papers were served, or how they were served.

Mr. NILES :

Be as brief as you can in those outlines.

Q. Were you informed by Mr. Harris that that writ was attempted to be executed before the original came to Albany? A. I decline to state what I was informed.

Mr. STICKNEY :

I wish the Committee to decide as to whether the witness shall answer that question.

Mr. NILES :

You have a right to prove declarations of conspirators when they are to show the *animus* and all that kind of thing, but I don't know that you are to prove that fact by hearsay in a case of this kind any more than in any other case.

Mr. STICKNEY :

We won't ask it; we withdraw the question

Mr. VAN COTT :

This is a Legislative inquiry, and the part we are taking is merely to suggest and assist the Committee. If the Committee were making this inquiry in the absence of any assistance of that kind, they would be following the track of evidence; if they had reason to suppose that certain things had been done, and they were examining a witness as to whether they had been done, and the witness himself could not say whether they had been done, the Committee would naturally ask, "Were you informed by certain persons who were cognizant of the fact that they had been done?" Not with a view of making that final evidence of the fact, but with a view of sending for that person, to learn from him whether the fact had been done as stated. This is merely following out the inquiry, getting what hints you can get, and

getting on the trail of evidence, so as to summon proper persons to give the testimony. It is in that point of view we made the inquiries.

Mr. NILES :

That is the distinction I made. It is necessary to show the conspiracy, and to develop the conspiracy, but if your purpose was to prove the facts, you are wasting time.

Mr. STICKNEY :

We concede that it is not a final proof of the fact.

Mr. HILL :

As far as I am concerned, I think it is as admissable as anything else.

(The Committee decided that the evidence was admissable, and the witness claimed that he ought not to answer the question, on the ground that it was a confidential communication between counsel.)

Mr. ANDREWS :

We do not object to its being answered.

Mr. TILDEN :

I don't think the privilege applies to your question.

WITNESS :

I have no objection to answering this particular question.

Mr. HILL :

We prefer not to rule on that question on the privilege of counsel.

By Mr. STICKNEY :

Were you informed by Mr. Harris that the writ was attempted to be executed before the original came to Albany? A. I don't remember that I was. Then all those intermediate parts are struck out by the stenographer?

Mr. HILL :

It has been omitted.

Q. Did you, on the 9th of August, get any other order signed by Judge Barnard? A. I don't remember that I did.

Q. Did you leave Albany on the 9th of August? A. I don't think I did.

Q. Did you, on the 10th of August, get any order signed by Judge Barnard? A. I can't remember now whether I did or not.

Q. Can you be positive that you didn't? A. If the order was shown me, I think very likely I could tell.

Q. What is your best recollection without seeing any paper? A. My best recollection without seeing any paper is, that I got one order from Judge Barnard on the 9th of August.

Q. Do you remember what that order was? A. I think it was an order to show cause.

Q. An order to show cause for what? A. I will correct myself by saying, I don't think that I did get an order personally from Judge Barnard at any time during that week.

Q. Did you go to Poughkeepsie on Monday of that week? A. I went to Poughkeepsie one day of that week; whether it was Monday or Tuesday, I cannot recollect.

Q. Did you go more than once? A. No, sir.

Q. It was either Monday or Tuesday, was it? A. I think it was Tuesday.

Q. Do you remember what orders or papers you presented to Judge Barnard at Poughkeepsie? A. I didn't present any paper to Judge Barnard at Poughkeepsie.

Q. Do you remember what orders or papers you took to Poughkeepsie at that time? A. I don't remember unless the papers are shown me.

Q. Do you remember whether you took any orders or writs to Poughkeepsie on that day, which were not signed by Judge Barnard, which you afterwards, on that same day, saw with Judge Barnard's signature to them? A. I don't think I saw any writs signed by Judge Barnard on that day.

Q. Any orders? A. I think I saw an order.

Q. Do you remember what the order was? A. I think it was an order to show cause why a certain order of Judge Peckham's should not be set aside.

Q. Did you take that order from Albany to Poughkeepsie, according to your best recollection? A. I don't think I personally took it.

Mr. TILDEN :

Q. You mean the order before it was signed?

Mr. STICKNEY :

A. Before it was signed.

By Mr. STICKNEY :

Q. Did any one else carry it who went with you? A. I think there did.

Q. Who? A. Hamilton Harris.

Q. Did he go with you to Poughkeepsie? A. I think he did.

Q. Can you now state whether that was on Monday or Tuesday? A. I cannot; I think it was not, however, on Monday.

Q. Then your best recollection is that it was on Tuesday, I suppose?

[Not answered.]

Q. Do you know, or have you any information, of any papers being taken by any one else to Poughkeepsie than by yourself? A. I have not; I didn't take any papers to Poughkeepsie.

Q. Then by Mr. Harris? A. I have no knowledge.

Q. Did you hear, at any time on those two days, that papers were sent to Poughkeepsie? A. I didn't.

Q. This order you mention, which you think went to Poughkeepsie on Tuesday—did you see it before it had the signature of any Judge attached to it? A. I think I saw a draft of an order to show cause of the nature I have stated.

Q. Did you see it when you were at Poughkeepsie, at any time, with Judge Barnard's signature on it? A. I don't remember of doing so.

Q. Did you return from Poughkeepsie to Albany on that same day? A. My impression is that I returned to New York.

Q. You state positively that you didn't return to Albany? A. I cannot state positively, but my recollection is that I was on my way from Albany to New York, and stopped at Poughkeepsie with Mr. Hamilton Harris.

Q. Did you see an order in Mr. Hamilton Harris' possession on that day with Judge Barnard's signature? A. I think I did; I am not positive.

Q. That is your best recollection? A. Yes, sir.

Q. About what time of day? A. I don't remember now, sir.

Q. Did you see Judge Barnard on that day in Poughkeepsie? A. I don't think I did.

Q. Where did you go when you went to Poughkeepsie? A. I went to Judge Barnard's house.

Q. Did you go in? A. No, sir.

Q. Did Mr. Harris go in? A. Yes, sir.

Q. How long did he remain? A. A considerable time.

Q. An hour? A. I don't think he remained as long as that.

Q. Have you no recollection as to what time of the day this was? A. No, sir; I don't remember exactly what time I left Albany.

Q. Do you remember what time of the day you left Poughkeepsie for New York? A. I do not.

Q. Do you remember what time of day you reached New York? A. I do not.

Q. Do you remember where you went after you had reached New York? A. No, sir; I have no distinct recollection.

Q. Did you go to the County Clerk's office? A. I don't remember.

Q. Have you no recollection whether you did or not? A. I have no recollection.

Q. Can you say positively that you didn't go to the County Clerk's office after you reached New York on Tuesday? A. I think I should have remembered if I went, but I cannot now state positively whether I went to the County Clerk's office or not.

Q. Did you reach New York city at an hour before or after five o'clock P. M.? A. I can't state.

Q. At what time did you leave Albany? A. I told you once or twice I could not remember.

Q. Do you remember the times the trains were leaving Albany about that period? A. I do not know.

Q. Was it the morning or afternoon that you left Albany? A. My impression is that it was morning, but further than that I can't state.

Q. I suppose you stayed over one train in Poughkeepsie? A. You can suppose what you please.

Q. I ask you if you think you did? A. I think I did.

Q. It is now your best recollection that you got to New York before or after five, or about five? A. I can't state.

Q. Can you make any statement at all as to what hour you did reach New York? A. I can not.

Q. Do you know what time Mr. Hamilton Harris left Poughkeepsie to return to Albany? A. I do not.

Q. Did you go with him to the railroad station? A. I think I did.

Q. Have you any recollection whether you saw him afterwards on that day? A. I don't remember seeing him afterwards.

Q. (Handing paper to witness.) Look at that paper now shown you, and say whether that is, according to the best of your recollection, an order which was granted by Judge Barnard, on the 10th of August, at Poughkeepsie? A. I think that is the order that I have described.

Mr. STICKNEY:

We offer this in evidence. It is an order to show cause, "before me, at my Chambers at the Court House, in the city of New York, on the 12th day of August instant, why said order of Judge Peckham should not be set aside and vacated." We will put the whole paper in evidence. It is in the suit of Azro Chase. The papers I read in evidence are affidavit of Martin D. Conway, sworn to on the 11th of August; the order signed by Judge Barnard on the 10th of August; the affidavit, or copies of affidavit, of Henry Smith, and the order granted by Judge Peckham on the 9th day of August, all in the same suit, endorsed on the back, "Filed the 12th of August, 1869." (Marked "Charge 2, V)."

By Mr. STICKNEY:

Q. Have you not many times seen Mr. Harris' handwriting? A. Yes, sir.

Q. (Handing paper to witness.) Have you any doubt that that is in his handwriting? A. I cannot swear positively.

Q. Have you any doubt? A. I think it is in his handwriting.

Q. The order itself is in whose handwriting? A. My own, the most of it. It is in my handwriting.

Q. And in whose handwriting is the copy of Henry Smith's affidavit and Judge Peckham's order? A. I am not certain.

Q. Have you any idea? A. I don't suppose that is proper—"any idea."

Q. The ink endorsement, except the words, "Filed August 12, 1869," in whose handwriting are they? A. I don't know.

By Mr. STICKNEY:

Q. There is an endorsement here in pencil, which I will read: "Served Parr with a copy of order about 4 P. M., August 10, 1869, a complete copy of all the papers on Pruyn, same day, about 7.30 in the evening." No signature. Who was Parr? A. Mr. Parr was the Sheriff of Albany county, I believe.

Q. And he was the defendant in this suit, was he not? A. He was a defendant in the supplemental complaint and amended summons.

Q. Do you know in whose handwriting that pencil endorsement is? A. I do not.

Q. Is it not Mr. Conway's? A. I don't know.

Q. (Handing paper to witness.) Look at the paper now shown you from the files of the County Clerk's office, endorsed "Filed August 10th, 1869," being an order for an attachment in the Chase suit, and state in whose handwriting it is? A. That is in my handwriting, the most of it. (Marked "Charged 2 W.")

Q. When did you draw that? A. I don't recollect.

Q. Do you notice that the words "Dated August 9th, 1869," just following the other words, "On reading the affidavit of John C. Sibley," are in a different ink from the body of the order? A. I can't say whether it is in a different ink, or whether it has been blurred in some way.

Q. What is your opinion on that point? A. I have no opinion.

Q. When were those words, "Dated August 9th, 1869," written in by you, according to the best of your belief? A. I can not remember.

Q. Have you any knowledge, recollection, or belief on the matter? A. I have a belief about this.

Q. What is it? A. My belief is, that after writing the name of John C. Sibley, not knowing when his affidavit was verified, I left a blank, and finished drawing the order, and that that evening I found the affidavit, and got it, and wrote it in there, and whether it is the same ink I can not tell, or whether it has been blurred by something being placed over it.

Q. Look at the affidavit of John C. Sibley, which is annexed to this order; look at the figure "9" in the jurat, and see whether that appears to have been altered from "10" or "11"? A. I can't say that it does appear to have been altered; it is a bungling 9.

Mr. STICKNEY:

I offer in evidence the order granted on the 9th day of August, 1869, for a writ of attachment to be issued to the Sheriff of the county of Albany, commanding him to arrest Pruyn, Vanvalkenberg, and Ramsey, endorsed on the outside, "Filed August 10th, 1869." (Marked "Charged 2 X.")

Q. Look at that order, and say in whose handwriting the body of the order is? A. The body is in my handwriting.

Q. Will you say whether the words "Dated August 9th, 1869," in that order are not in a different ink from the body of the order? A. It looks to me as if it was, but I can't state positively that it is.

Q. Does not the ink in the main part of the order now shown you, and in the order last shown you, appear to have been the same? A. I can't say that it does, to my eye.

Q. Does not the ink of the words "Dated August 9th, 1869," in both orders appear to be the same, and in each order different from the ink of the balance of the order? A. The ink in the last order shown me seems to be a little different from the balance of the order.

Q. Does it seem to be the same ink as the words "August 9th, 1869," in the other order? A. I cannot state that it does appear to be the same.

Q. You have not any opinion on the subject? A. I have not any opinion; they are very similar.

Q. In the paper marked "Charge 2 X," there are the words "John C. Sibley" coming after the words "The affidavit of Henry Mangan," erased, are they not? A. Yes, sir; they are not erased; there is a line drawn through them.

Q. Look at the affidavit of Henry L. Mangan, annexed to this paper marked "Charge 2 X," and state whether the figure "9" in the jurat has not the same appearance of alteration as the figure "9" in the jurat of the other affidavit mentioned to you has? A. It appears to have been altered in the same way.

Q. Do you know when those orders, or have you had any information when those two orders were signed by Judge Barnard? A. No, sir; I have not.

Q. Have you any recollection when you copied or wrote those orders? A. I think I copied them on the 9th.

Q. Were the affidavits recited in those orders sent with the order to Judge Barnard for his signature? A. I don't know what papers were sent.

Q. Where it was signed? A. I have no knowledge or information in reference to it.

Q. Is it not quite clear to you, from the appearance of the order marked "Charge 2X," that it was intended originally to use the affidavits of Mangan and Sibley, both, on the application for that order? A. I cannot tell without reading the paper through.

Q. They are both recited in that order, are they not? A. A line is drawn through the name of John C. Sibley, in the one marked "Charge 2 X."

Q. And that affidavit of Sibley is not attached to that order, but is attached to the other order? A. It may have been another affidavit of John C. Sibley referred to, for all I know to the contrary.

Q. And the signature of Judge Barnard on those two orders are

both genuine, are they? A. I have not the least doubt but they are genuine.

Q. Those orders must have been copied by you in Albany, were they not? Copies were written? A. I think they were.

Q. The orders themselves? A. As far as my handwriting is concerned, I think it was made in Albany.

Q. Was Judge Barnard in Albany? A. Not to my recollection.

Q. You never heard that he was? A. I never heard he was there.

Q. Do you know, or have you any information, who took those orders to Judge Barnard to obtain his signature? A. I do not.

Q. Do you know, or have you any information, where those orders were signed by Judge Barnard? A. I have not any personal knowledge in reference to it.

Q. And they recite, do they not, that they are granted at a Special Term of the Supreme Court of the State of New York, held in the Court House in the city of New York? A. It is a matter of record what they recite.

Q. When you went to Poughkeepsie on the 10th of August, did you take any writs of attachment with you? A. I don't remember taking any with me.

Q. Did Mr. Harris take any writs of attachment? A. I don't remember that he did; I don't know that he did.

Q. Did you see any writs of attachment, or copies of writs, before you got to Poughkeepsie on that day? A. I don't remember now of seeing any.

Q. Do you remember of seeing any after you got there? A. I don't remember.

Mr. STICKNEY :

We put in evidence three writs of attachment, and the return of the Sheriff, the return being endorsed, "The People v. Ramsey," and "The People v. Pruyn," endorsed, "Filed, August 14th, 1869."

[The chairman marked the writ of attachment in the case of "The People v. Pruyn, Charge 2 Y." Also the writ of attachment in the case of The People v. Ramsey, "Charge 2 Z." Also the writ of attachment in the case of The People v. Van Valkenburgh, "Charge 2, A 1." Also the Sheriffs' return, "Charge 2, B 1."]

Q. Look at the writ of attachment in the case of Pruyn, marked "Charge 2 Y," and say in whose handwriting the body of that is? A. That is my handwriting.

Q. And the attachment against Ramsey? A. That is mine.

Q. And the attachment against Van Valkenburg? A. That is mine, also.

Q. Do you remember when you wrote those? A. I do not.

Q. In the attachment against Pruyn, "Charge 2 Y," the words "George G. Barnard" in the attestation clause, are those in your handwriting? A. Yes, sir.

Q. Are they in a different ink from the rest of the body of that

paper? A. I don't know it is a different ink; it may have been more rapidly blotted.

Q. Is it not quite clear that those words, "George G. Barnard" were not written at the same time as the rest of the writ? A. They may have been written after the order was copied down to the signature.

Q. The signature of Judge Barnard on the outside of each of those three writs is in his handwriting, is it not? A. I think so; I suppose he can identify his own handwriting; I think that is his handwriting.

Mr. STICKNEY:

We call particular attention to the endorsement on the outside of each of those writs, holding each party to bail in \$25,000, signed by Judge Barnard.

Q. To whom did you give those writs of attachment after you wrote them? A. I have not read them and cannot tell.

Mr. STICKNEY:

I will call the attention of the Committee to the fact that the one against Pruyn, purports to be tested on the 10th of August, and the one against Ramsey on the 9th, and the one against Van Valkenburg on the 9th, they all being attached to the same Sheriff's return.

Q. The ink endorsements, except the Judge's signature, are in your handwriting, are they not? A. No, sir; it is not my endorsement.

Q. The endorsement by the Special Term of the Court, "Hold the defendant, Robert H. Pruyn, to bail in the sum of \$25,000." Is that in your handwriting? A. It is.

Q. On the Ramsey writ, the endorsement "By the special order of the Court; Hold the within named Joseph H. Ramsey to bail in the sum of \$25,000." Is that in your handwriting? A. It is.

Q. On the Van Valkenburg writ, is the endorsement "By the special order of the Supreme Court; Hold the within named, Joseph W. Van Valkenburg, to bail in the sum of \$25,000." Is that your handwriting? A. It is.

Q. State as nearly as you can recollect, to whom you gave those writs after you had written them out? A. I don't recollect that I had the writs in my hand after they were signed.

Q. Have you any recollection to whom you gave those writs before they were signed? A. I have not.

Q. Did you write the endorsements and the bodies of the writs at the same time, as nearly as you can recollect? A. I have no recollection upon the subject. I think very likely I wrote them all at one and the same time.

Q. Have you no recollection to whom you gave those? A. I have answered you; I have not.

Q. Did you get them signed by Judge Barnard yourself? A. I don't remember.

Q. Do you recollect you saw them after they were signed by Judge Barnard? A. I have no recollection of seeing them until to-day.

Q. Did you have those with you when you went to New York that day? A. I don't remember.

Q. Do you know whether they were signed by Judge Barnard on the days when they bear date? A. I don't know; I presume they were.

Q. You have no knowledge?

(Not answered.)

Q. Do you presume they were signed at Poughkeepsie or New York? A. I have no presumption in my mind about them.

Q. Have you any knowledge or information on that point? A. I have not, as I have already stated.

Q. Is it not quite clear that in the Ramsey and in the Van Valkenburg writ, the figure "9," in the attestation clause, is written over the figure 10? A. It is not clear to my mind that it is written over the figure 10. It is clear to my mind that the 9 is rather a bungling 9.

Q. Is it not clear to you, that some other figures, or letters, or characters of some kind were first written underneath this figure 9? A. It is not clear. It may have been and may not.

Q. You have no knowledge or information when or where those writs of attachment were signed by Judge Barnard? A. I have answered that once, and I think twice.

Q. Have you any knowledge or information when or where the seal on those writs of the County Clerk's office was affixed? A. I presume in the County Clerk's office; further than that, I know nothing about it.

Q. Have you any knowledge, information or belief as to when those seals were affixed? A. I have not.

Q. Was there a County Clerk's seal in Poughkeepsie? A. Not to my knowledge; I never heard of one there.

Q. Have you any information that there was one there? A. I have none whatever.

Q. Did any one else, besides Mr. Hamilton Harris, go with you to Poughkeepsie on that day? A. I don't remember that there was.

Q. Did John C. Sibley go with you? A. Not to my remembrance.

Q. You know John C. Sibley, do you not? A. I do.

Q. Can you be sure that he didn't? A. I am quite sure he didn't.

Mr. STICKNEY:

We now offer in evidence an order granted on the 11th day of August, by Judge Barnard, in suit of The Albany and Susquehanna Railroad Co. and William A. Rice *vs.* Ramsey and others, endorsed, "Filed August 11th, 1869." (Marked "Charge 2, C 1.")

Mr. STICKNEY:

We put in evidence with it, also, the affidavit of Charles Courter, sworn to on the 10th of August, on which it was granted.

Q. Did you have anything to do with the obtaining of that order, as far as you remember? A. Will you show me the order?

Q. I will. (Handing order to witness.) A. I don't distinctly remember about that order; it was granted on Wednesday. I must have been in New York that day, and may have obtained the order; I don't know.

Q. Do you remember when you returned to Albany? A. I never returned to Albany after reaching New York, after my first visit.

Q. Were you not there at the time of the election? A. No, sir; I was not.

Mr. STICKNEY:

I will put in evidence a writ of attachment granted by Judge Barnard, on the 12th day of August, against Joseph H. Ramsey, endorsed, "Let the within attachment issue without bail. N. Y., August 12th, 1869. George G. Barnard." (Marked "Charge 2, D 1.")

Q. In whose handwriting is the body of that paper attached? A. In Mr Ensign's.

Mr. STICKNEY:

We put in evidence the return of Sheriff Parr, annexed to the paper marked "Charge 2, D 1."

Q. Do you remember having had anything to do with the execution of that writ of attachment? A. No, sir; I do not.

Q. Do you remember having had anything to do with the preparation of the arrest papers, or with the procuring of the order? A. I think not; I may have copied some of the papers.

Q. Will you look at the papers, and see if they refresh your recollection at all? A. I don't see any of my handwriting in that bundle.

Q. Have you any recollection about anything connected with the suit? A. I remember it was brought, and the order of arrest obtained, and that the papers were copied in our office.

Q. Do you know who obtained it? A. I do not.

Q. Mr. Morgan testified that he obtained it. Do you remember, at any time, seeing him in relation to the suit? A. I do not.

Q. Or having any conversation with him? A. I don't.

Q. (Handing papers to witness.) Look at the papers now shown you, which are the summons and complaint in the case of Alonzo Everts vs. The Albany and Susquehanna R. R. Co. and others, and state what portions there appear to be written in your handwriting? A. The signature to the complaint and the verification.

Q. The signature of the attorneys, you mean? A. The signature of the attorneys to the complaint and the verification, with the exception of the signature and the Notary Public's name, and the iron-clad oath.

Q. Can you state when the injunction in that suit was obtained? A. The injunction order is dated the 6th of September, and the name of the Justice appears to have been written by Judge Clerke.

Q. And the endorsement on the complaint, and affidavits, "T. W. C.," that is in Judge Clerke's handwriting, is it not? A. I believe it to be.

Q. Did you obtain that order of injunction from Judge Clerke yourself? A. I don't remember doing so.

Q. Have you any recollection or information as to who obtained it from Judge Clerke? A. No, sir; I don't think I did obtain it.

Mr. STICKNEY:

I will read from the injunction order, in this suit of *Alonzo Everts vs. the Albany and Susquehanna R. R. Co. and others*, the commencement of the order: "At a Special Term of the Supreme Court, held at the County Court House in the city of New York, on the 6th day of September, 1869: Present—Honorable T. W. Clerke, Justice;" and at the end of the order the words: "T. W. Clerke, a Justice of the Supreme Court of the State of New York," in Judge Clerke's handwriting, the order being taken from the files of the County Clerk's office.

Q. Were you not in Albany on the day of the election? A. I was not.

By Mr. CURTIS:

Q. In regard to the place where the order appointing Fisk and Courter Receivers of the road was signed, did you notice whether or not it was a pair of rooms like these? A. Yes, sir; I don't know actually whether there were folding doors, but there was an opening into the front room.

Q. Was there a front room and a rear room? A. Yes, sir.

Q. You didn't take any notice whether they were connected by folding doors or not? A. No, sir, I did not.

Q. Did you take notice whether there was a carpet on the floor? A. I did not.

Q. Was there any furniture there at all, except chairs? A. I don't remember seeing anything except a table and some chairs.

Q. Did you observe any placards or bills hanging on the walls? A. No, sir; I didn't see anything of the kind; had they been there I would have seen them.

Q. If that place had been a sumptuous and luxuriously-furnished drawing-room you must have noticed that circumstance? A. I think so; I would have noticed it.

Q. Have you stated whether there were any other persons in that room than Judge Barnard and two or three gentlemen? A. There was.

Q. Was there any one there who seemed to be the proprietor of the room, or the office, or whatever it might be? A. I didn't see any one answering that description; I went right in there and saw these three or four gentlemen and Judge Barnard, and as soon as I saw Judge Barnard I immediately directed my attention to obtaining the order, and read the paper to him and came out as quick as I could after getting it, so as to reach that train.

Q. Do you know where 359 West Twenty-third street is? A. I know where it is.

Q. You have seen the outside of the house? A. I have seen the outside of the house, but never was in it.

Q. You have identified the number? A. Yes, sir; I have identified the number.

Q. Is there more than one number on the door or on the entrance? A. I never saw but one number.

Q. Sometimes, from changing the numbers, old numbers are left on and there are two. There is but one? A. There is but one, but I identified it soon after the letter of Brother Barlow was written, alleging that I obtained the order in that house.

Q. You never were inside of that house? A. I never was inside of the house in my life.

Q. In regard to persons who were present in the room, in the Erie Railroad building, when the consent was signed to there being an appointment of Receivers. Will you take the order and look at that consent and state which of those persons, whose signatures purport to be there, you saw sign it? A. I saw Mr. Herrick sign it and I saw David Wilbur sign it, and I saw Charles Courter sign it. I don't remember actually seeing any other person sign it.

Q. You have since known Mr. Courter? A. Yes, sir.

Q. And Mr. Herrick? Yes, sir.

Q. Did you know where Mr. Courter's office is? A. It is somewhere in the central part of the State; what particular town I don't remember.

Q. Do you know whether he lived on the line of the Albany and Susquehanna road? A. I think he did.

Q. Is he reputed to be a man of wealth? A. He is reputed to be a man of large means—a man of wealth and large interest in a bank and owns a large number of shares of Susquehanna stock.

Q. Was that understood to be his position at the time of his appointment as one of the Receivers of this road? A. A man of very great wealth; yes, sir.

Q. A man standing high in his own community? A. Yes, sir; I was so informed by these men at the time.

Q. You were so informed by his co-directors, or those who profess to be his co-directors? A. Yes, sir; who profess to be.

Q. Do you know of any conspiracy, combination or concert of any kind, between Judge Barnard and anybody, whether concerned as client or counsel or attorney in the procurement of those orders, or the granting of orders for an improper purpose? A. I do not; and I don't believe any existed.

Q. Did you have any conversation with Judge Barnard, prior to making an application to him for any order in the course of this litigation in respect to the subject matter on which you afterwards applied to him for an order? A. I never did.

Q. Did you ever, in any other case, have any private conversation? A. No, sir; never in any other case.

Q. Do you know of any connection between Judge Barnard and Mr. Fisk or Mr. Gould, or any relation between them which could be

assigned as a reason, or a motive, or a cause why he should enter into a conspiracy with them to put them into the control or possession of the Albany and Susquehanna railroad? A. I do not know.

Q. Did you ever see Judge Barnard in the house of either of your partners? A. No, sir; never in the world.

Q. Did you ever see him at your office? A. No, sir; never.

Q. Either of your offices? A. No, sir.

Q. You have a business office down town in Pine street? A. Yes, sir.

Q. And you have a business office at Field & Shearman's, at the Erie Railroad building in Twenty-third street? A. Mr. Shearman has an office there which he uses for our business when he is not engaged in conducting the affairs of the Erie Company. I have never seen Judge Barnard in either of those offices.

Q. In respect to this obtaining something or obtaining nothing. I understand you to say you didn't see Judge Barnard sign any order there? A. I did not; I don't think I saw Judge Barnard there.

Q. Is it not the practice, as far as you know, in this city, among lawyers universally, when they wish to obtain an order that requires an undertaking, that requires security, to prepare the undertaking, to have it signed before application to the Judge and take it with you? A. Always; I never understood any other kind of practice. It is the same here as when you obtain an attachment. No one ever thinks of going to the Judge to get a vessel attached without the attachment bond being signed, that I ever knew of.

Q. How long have you been with the firm of Field & Shearman? A. Since January, 1869. January of the year in which these orders were obtained.

Q. Were you a clerk in the office before. A. I was a clerk for a few months before that, but not immediately before that. I was a clerk for a few months in the early part of 1868.

Q. When you became a member of the firm, were they doing the business of the Railway Company? A. They were doing certain business of the Erie Railway when I went into the firm. They were never the general attorneys of the Company.

Q. Did you ever know of a law suit of the Erie Railway Co., brought before Judge Barnard, and decided by him in favor of the Company? Can you now recall any case in which Judge Barnard has ever made a decision in favor of the Erie Railway, since it has been under its present management. A. The only suit I now recall was that of Ramsey *vs.* The Erie Railway Co.

Q. Was that not a default? A. That was a default in favor of the Company.

Q. Was the default afterwards set aside? A. The default was afterwards set aside.

Q.. With that exception of a defaulted case, do you know of any decision of Judge Barnard in favor of the Erie Railway Co.? A. No, sir; I don't remember now of any; I remember one which he

gave against the Company, the case of *The Erie Railway Co. vs. Vanderbilt*.

Q. The Vanderbilt suit? A. Yes, sir; in which we sought to recover five million of dollars.

Q. Was that before Judge Barnard without a jury? A. That was before Judge Barnard without a jury at Special Term.

Q. Was it not a matter which addressed itself entirely to his discretion? A. Yes, sir.

Q. He could have decided it either way? A. Yes, sir; I thought he ought to have decided it in favor of the plaintiff, on the evidence.

Q. And he didn't? A. He didn't.

By Mr. ANDREWS:

Q. When you were first subpoenaed to appear before this Judiciary Committee, was anything said by any person connected with this prosecution as to when you should appear? A. Not when I was first subpoenaed.

Q. At any time when you were subpoenaed to come here? A. Yes, sir; when I was subpoenaed for the last time there was.

Q. Who spoke to you? A. Mr. Stickney and Mr. Parsons.

Q. What did they say to you? A. Mr. Stickney had me served on the afternoon of the day I was to give my testimony here, and directed his clerk to serve me with the subpoena. I asked him why he wanted to subpoena me again; if I had not testified fully to that? He said he didn't recollect; I didn't know why they should subpoena me again, but he thought it was safer to have me subpoenaed, but I need not come. I asked him why I should be subpoenaed if I was not expected to come, and he repeated about the same as I have already stated and said he would serve me with a notice in addition to the subpoena. That was for Saturday morning. The subpoena was afterwards taken from me by my consent and a new subpoena was then served upon me for Monday morning, and about the same conversation occurred, and afterwards I saw Mr. Parsons in reference to it. Mr. Parsons stated, in answer to my questions, that I had testified fully and he didn't know upon what grounds I was to be re-examined, but that it was necessary to have a person subpoenaed in order to keep the Committee here, and he also told me in reference to coming upon receipt of a notice. That was on Monday.

By Mr. PARSONS:

Q. In order to keep the Committee here? A. Yes, sir; that is how I understood you. You stood at the door.

Q. Can you explain how a subpoena upon you would keep the Committee here? A. I can explain what was intended; I suppose it was intended to subpoena a number of witnesses, so as to be able to say to the Committee a number of persons had been subpoenaed, and if they didn't come it was not your fault, but all the fault of the witnesses, and the Committee should be kept here for that purpose.

Q. And you actually think that was the intention of Mr. Stickney

and myself, in the conversation that you allude to? A. I thought so at the time, and I think so now, and especially since I have been subpoenaed, when it has been known I was very ill with this abscess over my eye. I understand three subpoenas have been left at the office for me, and three left at the house, not a word of which I knew until this morning.

Q. Was not the examination to which you have referred your examination in respect of the charges against Judge Cardozo? A. In reference to your conversation, they were.

Q. Was not that question addressed to Mr. Stickney and myself—a question asking whether your testimony was further needed in respect to those charges? A. Yes, sir.

Q. And was not the Monday morning for which you were subpoenaed Monday of last week? A. Yes, sir, I think it was.

Q. Were you not given to understand, in that conversation, that the reason that you were subpoenaed was that it was desired by the Committee of the Bar Association that you should be kept under subpoena during this investigation? A. No, sir; I don't so understand it.

Q. You got no such impression from the conversation? A. No, sir; for I stated, voluntarily, I would come any time; that there was no necessity for me to be subpoenaed. I told you that I was going to the country on Saturday, to my home, where I had not been since Christmas, and I wanted to stay over Sunday, and be back on Monday morning.

Q. Didn't Mr. Stickney and I say there would be no interference with your going to the country, provided you would be back by Monday morning? A. Yes, sir, provided I would be back by that time.

By Mr. STICKNEY:

Q. Do you know where Mr. Cole, whom you now mention, lives? A. I do not.

Q. Does he live in New York city? A. I do not know.

A. When have you seen him? A. I have not seen him in a long time. I have not seen him to speak to him in a year.

Q. Before you went to Poughkeepsie, on the 10th of August, on Tuesday, who told, or directed you, or requested you to go to Poughkeepsie? A. I don't recollect.

Q. Was it David Dudley Field? A. I don't recollect distinctly whether he did or not.

Q. Were you told, or not, that Judge Barnard was then in Poughkeepsie? A. I don't know that I knew; I presumed he was in Poughkeepsie.

Q. But you have no recollection by whom you were informed that he was there? A. No, sir.

Q. Do you know whether any telegrams were received from Judge Barnard, or sent to him, while he was in Poughkeepsie on that day? A. I never sent one to Judge Barnard, and never knew one had been received by Judge Barnard.

Q. Did you hear, or were you informed by any one, that telegrams

passed between Albany and Poughkeepsie, the telegrams being addressed to or received from Judge Barnard, on that day? A. I never heard it or had it intimated to me until this moment.

Q. Did you know at what house in Poughkeepsie, Judge Barnard was, yourself? A. I don't know.

Q. Did you know? A. I suppose at his own house, or the house of his brother.

Q. Had you never been there before? A. I never had been there before.

Q. Did Mr. Harris appear to know the way there? A. No; I don't think he did; I think he made inquiries on the way.

Q. Of the way to go from the railway station, you and Mr. Harris? A. Yes, sir.

Q. You say you have never known of any suits decided in favor of the Erie Railway Company, by Judge Barnard, except the Ramsey suit. Have you ever known any suits decided in favor of Mr. Fisk, by Judge Barnard? A. I don't think we ever tried a suit for Mr. Fisk before Judge Barnard. I don't recollect any such suit.

Q. Has Judge Barnard ever granted any order of injunctions or Receiverships for Mr. Fisk, or in suits where Mr. Fisk was a party? A. I think he has; yes, he has in suits to which he has been a party.

Q. Do you remember that in the case of Fisk vs. The Union Pacific Railroad Company, Judge Barnard granted an order making William M. Tweed, Jr., Receiver of all the property of the Company in the State? A. Not exactly in that form, but there was such an order granted by Judge Barnard in that suit.

Q. Do you remember Judge Barnard granting an order appointing a Receiver of the English stock in the suit of Fisk vs. The Erie Railway Company? A. I never knew anything about that.

Q. Did you ever hear of his appointing Mr. Coleman Receiver of 60,000 shares of Erie stock? A. Only in the newspapers.

Q. You have been informed of it? A. Yes, sir.

Q. In the Union Pacific case I have mentioned, do you remember that Judge Barnard granted an order directing Mr. Tweed, as Receiver, to open the safe of the Company and take the books from it? A. I don't think I saw that order, for I was absent at the time.

Q. You remember hearing in your office that the Court gave such an order? A. I remember hearing something about an order in reference to a safe of the Union Pacific Company, but what the exact terms of it were, I don't remember.

Q. Were not the words to this effect: "That the said Receiver is hereby authorized and directed to open the said safe, either by blowing it open or picking the lock?" Do you remember seeing words of that character in an order granted by Judge Barnard? A. No, sir; I don't remember seeing it; I don't recollect having seen the order. I have already stated something about a safe, but exactly what it was I cannot testify from my own knowledge, for I don't remember.

Q. Do you remember an order granted by Judge Barnard in the case of Smith, Gould & Martin (wherein Jay Gould was one of the

plaintiffs) against Underhill and others, or Neilson and others (I have forgotten which), restraining the defendants from enforcing or proceeding on a claim against the firm of Smith, Gould, Martin & Co., except in that action; do you remember an order of that kind, or similar to it, granted by Judge Barnard? A. I think there was an order granted by him in one of those suits, in which you afterwards, as attorney, consented that no arbitration should take place in reference to this claim before the Arbitration Committee of the Exchange.

Q. Do you remember the circumstances of that consent being obtained? A. Merely to identify the suit.

Q. Could you not, without much difficulty, if you took the time and refreshed your recollection, enumerate a large number of injunctions and orders appointing Receivers which have been granted by Judge Barnard in the interest of Fisk, or Gould, or the Erie Railway? A. A number of orders.

Q. Very many? A. No, sir, not very many; I don't think so; not in the suits that are in our office.

Q. Have you any idea how many orders Judge Barnard granted on motion of your firm in the Susquehanna litigation? A. No, sir; I didn't count; I don't know. I don't think as many as Judge Peckham granted.

Q. I didn't ask you that, did I? A. It is only to give you the number.

Q. Will you state whether you remember any order except the injunction order in the Everts suit during the whole of that litigation, which was granted on the motion of your firm, by any Justice except Judge Barnard? A. I cannot remember, unless my memory is refreshed by a perusal of the papers.

JOHN C. SIBLEY, having been duly sworn, was examined by Mr. STICKNEY, and testified as follows:

Q. What was your occupation in the month of August, 1869? A. I was in the counsellor's department on the Erie Railroad.

Q. Under Mr. Shearman? A. Yes, sir.

Q. Did you know Mr. Fowler at that time? A. What was his first name?

Q. What was his first name? A. I don't recollect.

Q. Have you ever seen a Mr. Fowler? A. Yes, sir; I have seen a Mr. Fowler.

Q. Connected with the Erie Railroad? A. No, sir.

Q. Or whom you used to meet at the Erie Railroad Company's office? A. No, sir.

Q. What Mr. Fowler do you have in your mind? A. I know a Mr. Fowler; I know several Fowlers, but none connected with the Erie Railroad.

Q. Did you know one you used to meet there? A. No, sir; never.

Q. Do you remember an evening on the 6th of August, when an

order was made appointing James Fisk Receiver of the Erie Railroad? A. Yes, sir.

Q. Where were you then? A. I was in the Erie office until nine o'clock.

Q. Were you with Mr. Shearman? A. Yes, sir.

Q. Do you remember who were there? A. Shearman, Mr. Gould, Mr. Sterling and the Directors of the railroad.

Q. Fisk was there, was he? A. I don't recollect that.

Q. Do you remember seeing him that evening? A. No, sir.

Q. This was in the Treasurer's office? A. The Treasurer's office, just in the vestibule.

Q. Of the Opera House? A. Yes, sir.

Q. Will you think one moment, and say whether you remember seeing Fisk there in that room during the evening? A. I don't recollect that particular evening. He was generally there—almost every night.

Q. Did you see the order itself? A. Yes, sir.

Q. Drawn by Mr. Shearman? A. Yes, sir. I don't know whether it was his handwriting.

Q. Do you remember when he gave it to Mr. Sterling? A. No, sir.

Q. Did you see Mr. Sterling go out with the order? A. No, sir.

Q. Do you remember the time—about twenty minutes past ten—when Mr. Sterling left that room? A. I don't recollect that. I don't recollect any exact time.

Q. Do you recollect his coming back there? A. I was writing at the table.

Q. Do you remember his coming back there? A. I don't recollect that.

Q. Do you recollect when Mr. Shearman told him to go for the order? A. I was not there at the time. I didn't hear the conversation. I don't know anything about Mr. Shearman giving the order.

Q. Did you see Mr. Sterling when he came back?

Mr. PRINCE:

He said he didn't.

A. I saw Mr. Sterling there several times, but I don't know what he was doing.

Q. At what time was the telegram sent from New York to Judge Barnard at Poughkeepsie? A. I don't recollect about the telegram.

Q. Did you see Judge Barnard? A. I didn't see him at the office.

Q. You didn't see him at the office at all during the evening? A. No, sir.

Q. Did you see him anywhere during the evening? A. No, sir.

Q. Where did Mr. Shearman tell Mr. Sterling to go to find Mr. Barnard? A. I don't know. I don't know anything of the conversation between Mr. Shearman and Mr. Sterling.

Q. Where did Mr. Fisk say Judge Barnard was? A. I didn't hear Fisk say anything.

Q. Where did Mr. Gould say he was? A. I didn't hear him say. I had no conversation with him there.

Q. Did you hear anything at all in that office there? A. No, sir; I didn't hear any orders given to Mr. Sterling. I didn't hear Judge Barnard's name mentioned at all—not at that time.

Q. You didn't hear his name mentioned at all during the whole evening? A. No, sir.

Q. When did you go to Albany, yourself? A. On Saturday afternoon, I think it was. This was Friday, wasn't it?

Q. Yes. A. I went on Saturday afternoon.

Q. On what train? A. The four o'clock.

Q. What papers did you take? A. A writ of assistance.

Q. And the injunction in the Chase suit—they were both together, were they not? A. Yes, sir.

Q. To whom did you give them when you got to Albany? A. To the Sheriff.

Q. Did you take the telegrams? You remember that these were sent by telegraph to Albany, before the originals were sent to Albany? A. Yes, sir.

Q. Did you write out the telegrams, or hear any directions given for the sending of those telegrams? A. No, sir.

Q. What time did you reach Albany? A. I think it was about ten o'clock—between ten and eleven.

Q. What was the first thing you did on Monday the ninth? A. I don't know.

Q. You went down to Poughkeepsie on the 10th—you went with Mr. Sterling? No, sir.

Q. How long did you stay in Albany? A. I think until the Wednesday succeeding.

Q. Are you quite confident about that? A. I think I am.

Q. Are you perfectly certain? A. I was there over Tuesday night or Wednesday night, I forget which; I was there two days at that time.

Q. Do you remember when the order of Judge Peckham, staying the proceedings under the writ of assistance, was issued? A. No, sir.

Q. Do you remember signing any affidavits? A. Well, no; I don't remember.

Q. Did you swear to some affidavits on Tuesday the 10th? A. I can't recollect; I made service of papers.

Q. What is that? A. I may have served some papers and made affidavits of service.

Q. That is your signature to that affidavit, isn't it (handing paper to witness)? A. Yes, sir.

(The affidavit of John C. Sibley, marked "Charge 2, W.") Look at that figure nine in the *jurat* of that affidavit. Have you any recollection when you swore to that affidavit? A. Let me see—when was the ninth?

Q. Monday. A. Oh, yes; well, I don't know anything about it, ex-

cept I went with Mr. Sterling and Mr. Conway to the Sheriff's office, and I think he gave me the writ of assistance that night.

Q. That was Saturday, the 7th, wasn't it? A. That is what the affidavit states.

Q. Was that figure nine in the jurat? A. I don't recollect anything about that.

Q. Did you see that? A. I don't recollect; I know that is my signature. My recollection is, that the writ of assistance was delivered to the Sheriff. I came with Mr. Sterling and Mr. Conway to the office.

Q. What time did Mr. Sterling leave for Poughkeepsie that Tuesday, to get the order from Judge Barnard? A. I don't know.

Q. At what time did you last see him on Tuesday? A. I don't recollect.

Q. Have you no recollection on that point? A. No, sir.

Q. Did he leave in the morning or in the afternoon? A. I don't know, and I don't know of his going to Poughkeepsie.

Q. You have no recollection whatever that he went to Poughkeepsie on Tuesday? A. No, sir; I didn't know he was going to Poughkeepsie.

Q. You didn't hear anything said about Judge Barnard's being in Poughkeepsie on Tuesday? A. No, sir.

Q. Nor anything about Mr. Sterling and Mr. Harris going to Poughkeepsie on Tuesday? A. No, sir.

Q. When did you see Mr. Sterling next? A. I don't recollect.

Q. You came here under a subpoena of this Committee, didn't you? A. Yes, sir.

Q. And almost immediately after you got here, Mr. Sterling found you, didn't he? A. No.

Q. Haven't you been talking with Mr. Sterling this morning? A. Yes, sir; but you said he found me. I tried to find him; I understood he was sick, and I went to his house this morning.

Q. And you have been talking to Mr. Sterling this morning? A. Yes, sir.

Q. What did he say to you? A. He asked me if I had been subpoenaed.

Q. And you had considerable conversation with him, didn't you? A. Well, we had conversation, but it didn't refer to this matter.

Q. Not in the slightest? A. Not much; he asked me what I was here for, and what I knew.

Q. Didn't he tell you that this was merely a personal matter? A. I knew that before.

Q. Did he tell you so? From whom did you know it? A. From what I have seen.

Q. What have you seen? A. I have seen you, and have seen him.

Q. What did Mr. Sterling tell you on that point? A. He didn't tell me that it would be a work of supererogation.

Q. What do you mean by a personal matter? A. What do you mean by the question?

Q. You swear that Mr. Sterling didn't use any expression of that sort? A. I think not; I don't think your name was mentioned this morning.

Q. I didn't ask you whether my name was mentioned.

Examination by Mr. CURTIS:

Q. Did you ever speak to Judge Barnard, on any subject, Mr. Witness? A. Never but once.

Q. When was that? A. I went to get him to approve an order.

Q. Where? A. I don't recollect that.

Q. In Court? A. No.

Q. Was it anything in connection with these litigations—these Susquehanna litigations? A. I don't recollect exactly.

Q. Well, it is immaterial. Did you ever speak to him in private on anything that was not a matter of business? A. I only spoke to him once in my life, and that is the occasion I have spoken of.

Re-examination by Mr. STICKNEY:

Q. Where was that? A. At his house.

Q. When? A. I don't recollect.

Q. During the Susquehanna litigation? A. Yes, sir; I say it was during the Susquehanna litigation that has been going ever since I have been in the office.

Mr. PRINCE:

Q. Was it about this time? A. No, sir.

Mr. PRINCE:

Q. Was it about August, 1869, I mean? A. Well, I couldn't state.

Q. Do you remember what the order was? A. No, sir.

Q. And you have no recollection whatever when it was? A. No, sir.

Q. Was it in the day time or in the evening? A. In the day time.

Q. Where is his house? A. I can't tell you.

Q. How do you know you went to his house? A. I should be very apt to remember; I don't know where his house is. I have been to Mr. Curtis' house, but I don't know where it is, if I wanted to go there now.

Q. Is it in Poughkeepsie? A. No, sir.

Q. Was it in New York city? A. Yes, sir.

Q. Who told you to go there? A. That I don't recollect.

Q. Have you no recollection on that? A. No, sir.

Q. Is your memory good? A. Well, pretty good.

Mr. NILES:

Q. Was it either of the orders in this Susquehanna litigation? A. I don't recollect.

Mr. PRINCE :

Q. You have got your order? A. Yes, sir, I got my order.

Mr. CURTIS :

Q. Was the order right?

Mr. PRINCE :

A. I do not suppose that he is the judge of the law about that.

By Mr. CURTIS :

Q. Are you a lawyer? A. Yes, sir.

Q. Been admitted to the bar? A. Yes, sir.

Q. Was the order right, in your opinion—was it a proper order to grant on the papers? A. Yes, sir.

Mr. STICKNEY :

The witness has already stated he didn't know what it was.

Mr. CURTIS :

He can remember as to whether it made an impression on his mind, whether it was a proper order to grant; that is all we ask.

THOS. G. SHEARMAN, having been duly sworn, was examined in chief by Mr. STICKNEY, and testified as follows :

Q. You were counsel for Fisk and Gould, in the Susquehanna litigations—one of them? A. I was one of the counsel for Fisk and Gould, and a number of other gentlemen, in the Susquehanna litigation.

Q. Did you prepare the papers on which the order of the 6th of August, 1869, appointing Messrs. Fisk and Courter Receivers, was granted? A. I did.

Q. At the Treasurer's room, at the Grand Opera House, did you not? A. Yes, sir.

Q. Will you look at the paper now shown you, and state what it is? (Handing paper to witness) Look at the signature, and then you will have no difficulty at once, I imagine? A. This appears to be an affidavit which I made on the 16th of September, 1869, at the request of Mr. Henry Smith, in two suits brought against the Albany and Susquehanna Railway Companies and others, one by John W. Van Valkenburg, and the other by Azro Chase.

Q. And the contents of the affidavit are true, are they not? A. Not entirely; they were intended to be true when I made it, but owing to the questions being put to me in an unfair manner, without giving me the opportunity to see papers which were referred to, I made at least one mistake.

Mr. STICKNEY offered a portion of the affidavit in evidence, to which Mr. CURTIS objected.

Mr. CURTIS :

The offer of a part of an affidavit is not according to any rule of law, and I do not know why the Committee should follow any other rule. If the gentleman will tell us what the affidavit is introduced for, and what it tends to show, and what the object of it is, we may not have any objection to the use of part of it. This investigation proceeds in such a feeble, creeping, and approaching way, from this step to that, that it is impossible for those who are interested, as we are, in watching it, and in endeavoring to defend ourselves, to appreciate what is the purpose for which a particular paper is introduced, and brought before the witness. Now, I would like to have Mr. Stickney state to us what is the object for which he introduces this affidavit, and what it tends to show ?

Mr. STICKNEY :

If it is desired by the Committee, I will do so.

Mr. CURTIS :

I take it that the Committee will desire to accommodate the counsel for the defence, so far as to see to it that we are properly informed of the object of the evidence, and the reasons why it is introduced.

Mr. PRINCE :

I do not see why you do not put in the whole affidavit.

Mr. STICKNEY :

Simply, Mr. Chairman, that some portions of it would be uselessly taking up your time.

Mr. CURTIS :

Q. It is in the form of question and answer ? A. Yes, sir ; some portions would simply take up your time, and encumber the record ; I propose to read only the material portions of it.

Mr. CURTIS :

Do you mean that you introduce it as a short hand method of getting the facts before the Committee.

Mr. STICKNEY :

That is it.

Mr. CURTIS :

Why not ask Mr. Shearman the question ?

Mr. STICKNEY :

We prefer this method. This is Mr. Shearman's own statement of facts. We shall take very much less time in reading the affidavits than in discussing the matter.

Mr. CURTIS :

That may be. Proprieties are one thing, and time is another.

Mr. PRINCE :

Why not put the whole affidavit in as an Exhibit, and ask any questions on any part of it you choose? Of course, we do not desire to dictate to you, but we simply offer this as a suggestion.

M. STICKNEY :

It is quite a long affidavit, and we have no objection to marking it as an Exhibit.

M. PRINCE :

We do not wish, of course, to make extra printing.

Mr. STICKNEY :

We propose to read some portions of it and have them incorporated now in the minutes.

Mr. PRINCE :

What portion do you want to put in ?

Mr. STICKNEY :

About one half of it.

Mr. PRINCE :

If you wish to put in as much as half of it you had better put in the whole.

The WITNESS :

If the Committee will allow me, I wish to say I am not acting as counsel, of course, but I would suggest that the putting in of this affidavit will necessitate an explanation on my part, which I would say to the Committee, that I would have a right to make, no matter what the counsel on either side would ask, and it will lead to a good deal of irrelevant matter if it is admitted, simply owing to there being some unintentional errors and misapprehension. The gentleman could ask me the questions that are there without encumbering the record. They are on very trivial points too, and yet I would not wish to leave those errors uncorrected, because, uncorrected, they would differ from statements made by Mr. Sterling on the defence.

Mr. STICKNEY :

Unless the Committee wish otherwise, we will read, to go upon the record, portions of the affidavit. We think it wiser to do so.

Mr. PRINCE :

Go on.

Mr. CURTIS :

Does that affidavit relate to this subject ?

Mr. STICKNEY :

Entirely, or almost entirely.

Mr. PARSONS :

The portions we read will relate to this subject, and the portions we do not read does not relate to it.

Mr. PRINCE :

The other side can put in the remainder of the affidavit when they come to call their witnesses, if they choose to, and ask any questions touching any part of the affidavit that they desire.

Mr. CURTIS :

No doubt I can, but what a singular mode of examining a witness this is ; that instead of asking him the substances of these questions they want to know, they introduce an affidavit sworn to by him on another occasion, and ask him if he swore to it. Then they offer to read that. Do they offer it as part of the testimony, or as proof of a fact.

Mr. PRINCE :

They read it as testimony given by the witness under oath.

Mr. CURTIS :

Do they want to contradict the witness ?

Mr. PRINCE :

I have not the remotest idea.

Mr. CURTIS :

They call a witness, and the first thing they do is to put into his hands an affidavit which he swore to on some other occasion, without having examined him on the subject matter at all.

Mr. PRINCE :

Please go on, Mr. Stickney.

Mr. STICKNEY :

I will read from the affidavit: Q. "When and where was the first thing done to your knowledge in the proceeding, in the appointing of James Fisk, Jr., and C. Courter, Receivers of the above named Company? A. In the Grand Opera House, on the evening of August 6th, 1869. Q. Give the hour as near as you can? A. About eight o'clock. Q. In what part of the Grand Opera House was this? A. The office of the treasurer of the Opera House. Q. Whose Opera House is this, and who is the treasurer? A. The title of the building is in Messrs. Fisk and Gould. It was then leased by James Hern; I don't know who was treasurer. Q. When, where, and by whom was the order, ap-

pointing Fisk & Courter the Receivers, signed? A. It was signed certainly before thirty-five minutes past ten on Friday, Aug. 6th, because I noticed that to be the time after I had had the order signed in my hand some time. I don't know where it was signed, except that certainly it wasn't signed in the Opera House or any part or adjunct of it. The signature of George G. Barnard, with which I am familiar, is at the foot of the order, and I am confident it is genuine. He is one of the Justices of the Supreme Court. Q. About what time that evening can you say with confidence or certainty, that it was signed? A. It must have been after fifteen minutes past ten P. M. Q. State, if you please, who took it out to procure the Judge's signature? A. One of my partners. Mr. John W. Sterling. Q. How long was he absent from your presence, procuring this signature? A. I cannot recollect within ten minutes, but it was not longer than from ten-twenty, to ten-thirty-five, P. M. Q. Give what knowledge or information you have, as to the place where Judge Barnard was during that time? A. I have no knowledge, and my information being acquired by me as counsel, I might decline to answer this question; but, understanding that it has been charged that the order was signed in the Opera House, and knowing that much to be a gross falsehood, and having never in my life applied, nor permitted anybody else to apply, to any Judge for any order, in my own office, or in the office of a client, or in any place, or in any circumstances which might make such applications in the least degree improper, I waive my privilege so far as to say I was informed on that evening, that Judge Barnard was visiting a friend of his in the neighborhood. My informant gave me no name or address, nor any information other than I state. Q. Give any knowledge, information or suspicion as to the name of that friend, and whereabouts in the neighborhood Judge Barnard was visiting him or her? A. As to the name I have no knowledge, information, belief or suspicion; as to the address, I have nothing but conjecture, and I decline to give my conjectures as evidence, when they may be entirely incorrect. Q. How and from whom did you derive your information that he was visiting a friend in the neighborhood? A. From Mr. James Fisk, Jr."

* * * * *

Mr. STICKNEY:

I will read from another portion of the affidavit as follows:

"Q. Did any one accompany Mr. Sterling when he went for the order appointing Receivers? A. I don't know. Q. Was there any one with him when you saw him go, as you have described? A. I saw Mr. Fisk go with him as far as the vestibule of the Opera House, but I didn't understand nor believe that he was going with him to see the Judge. Q. Did you see Mr. Sterling or Mr. Fisk leave the Opera House building with the order? A. I didn't absolutely see them go out of the door. Q. Are you sure of your own knowledge that from the time Mr. Sterling left the Treasurer's office to procure the signature of the Judge, until he returned with it, that he or Mr. Fisk went outside of the building of the Grand Opera House at all? A. I can-

not, but if Mr. Sterling did not leave the building, he must have stood in a large, open hall, brilliantly lighted, and opening wide on a crowded street, for there were no rooms or side places which he could have entered without returning within my sight. Q. Don't you enter the auditorium room from the hall? A. Yes, sir; through a single narrow gate and pass an open window in the treasurer's office, but not otherwise. Q. Was there playing there that night? A. Yes, sir."

* * * * *

Mr. STICKNEY:

I will proceed to read from another part of the affidavit as follows:

"Q. Who delivered the order to Mr. Sterling to procure the Judge's signature? A. I did. Q. What directions or suggestions were made to him? A. Knowing that Judge Barnard was in the habit of visiting theatrical performances, I took the precaution of telling Mr. Sterling that under no circumstances he should have any interview with the Judge in the Opera House, and told him I would much prefer he would go to the Judge's house on 21st street. He said, 'All right.'"

Mr. STICKNEY:

That is all we will read at the present on that point.

Q. Have you the writ of assistance, or a copy of it that was granted in the Chase suit? A. I haven't.

Q. Have you caused any examination to be made at your office for for a writ, or a copy? A. I have not.

Q. A subpoena was served upon Mr. Dudley Field, for that writ of assistance. Will you cause examination to be made at your office for the original or a copy, and will you send it to the Committee? A. I will if the Committee request it. I have never been asked for it, before.

Q. If you are ready to do so, we will not subpoena you to produce it; otherwise, we will.

Mr. PRINCE:

It will save the trouble of subpoenaing you if you will send it around.

A. The Committee wish it?

Mr. PRINCE:

Yes, sir.

Mr. STICKNEY:

We will read a further portion of the affidavit relating to the order granted by Judge Barnard on the 10th of August, which has already been testified to.

A. Allow me to object. I wish the gentlemen would divide this; I presume he is going to ask me some questions about this, and I would rather he would divide his questions, and ask me about the first branch, before he goes to that, because that is the part that is incorrect.

Q. I do not know that we wish to ask any questions about that. A.

Then I object, on my own account, to the reading of an affidavit which I have already stated is not literally correct. I think I have a right to object, as a witness. This is a very informal kind of thing.

Mr. PRINCE:

Well, if the affidavit were not read now, it could be put in after you went away. It is for your convenience now, and I suppose it is out of courtesy to you to read it now, rather than at any other time. A. Usually witnesses have the right, on their own account, to object to the introduction of any paper, unless it is produced to them, and they are asked questions about it, to give them an opportunity to explain. This is a matter of right. The gentlemen can, of course, go on reading it if they choose.

Mr. PRINCE:

I think the witness should have the right to explain.

Mr. STICKNEY:

We do not object; we only wish to follow our own line of proof.

A. The gentlemen want to lay a little trap. They know a part of this is incorrect, and they want to mix it all up together.

Mr. STICKNEY:

We do not think we can lay a trap in which Mr. Shearman can be caught.

Mr. PRINCE:

If in these portions of the affidavit you wish to explain, I think this is the best time to do it.

A. I have no desire to explain the first part which has been read. I thought they were going to ask me questions about it.

Mr. PRINCE:

Very well; proceed, Mr. Stickney.

Mr. STICKNEY:

I will read as follows: "Q. When was the order granted, and by whom, and who applied for it, by which the injunction restraining the execution of that writ of assistance was declared inoperative, and the Sheriff was commanded to proceed and execute the writ? A. It was granted by a Special Term of the Supreme Court, held by Judge Barnard. I can't remember on what day, but it was between eleven o'clock A. M. and one o'clock P. M., at the Court House in New York city. I can't remember who applied for it. Q. Don't you know it was on the 10th of August? A. I don't, but it was certainly on the day on which it was dated on its face, whatever that may be. Q. Can't you refer to it, or a copy of it, on your register? [Question waived.]"

Mr. STICKNEY:

Now, if Mr. Shearman desires to make any explanation, of course

we have no objection to it. A. I wish to explain that these questions in relation to the order of the 10th of August, as appears by the paper itself, were asked without submitting to me any copy of the order itself, and I was at that time under an entire misapprehension as to the particular order referred to, and the consequence was that I afterwards found that the order which Mr. Henry Smith had in his mind when he was putting these questions to me was an entirely different order to the one I referred to. He was asking me questions in reference to an order about which I knew nothing whatever, and still know nothing of my own knowledge. That I knew nothing about except from information.

Mr. PRINCE :

You can now proceed Mr. Stickney.

Mr. STICKNEY :

Q. Have you any knowledge yourself of the orders that were granted on writs which were granted by Judge Barnard at Poughkeepsie? A. None whatever.

Q. Have you any information as to the writs of attachment that were granted on the 9th and 10th of August against Mr. Ramsay, Mr. Pruyn, and Mr. Van Valkenburg, as to when and where they were granted? A. I should be obliged to see the papers before I could answer that question.

Q. I will show them to you.

(Counsel hands papers to witness marked "Charge 2 Y," "Z," and "A 1," and "B. 1.")

A. I had some knowledge concerning the papers marked "Charge 2 Y," and "B 1," being the return of the Sheriff, and of another paper included in this bundle.

Q. Look at the paper now shown you—the summons and the complaint in *Wilbur vs. R. R. Co.*, marked "Charge 2 A," and state if you know when the application was made for the injunction order in that suit to Judge Barnard? A. I do not know.

Q. Will you look at the endorsement on the back, "Filed August 4th, 1867, G. G. B.;" and state if you saw that paper with the endorsement before it was actually filed in the County Clerk's office?

A. I do not recollect, but I think it is unlikely that I did.

Q. Is that the usual form in which the endorsement "filed, &c," appears on papers that are filed in the County Clerk's office, as far as your experience goes? A. "August fourth," is.

Q. But the endorsement above, "Filed August 4th, 1869, G. G. B." does that ordinarily appear on papers filed in the County Clerk's office, as far as your recollection goes? A. It does, when the papers are handed to the Judge and left with him. The Judge sometimes insists upon having the papers left with him, as a security that they shall be filed, because lawyers are careless and promise him to file papers when they don't. Sometimes the Judge keeps it and makes that mark upon it, and hands it to the Clerk himself.

Q. Is that the case with papers which are presented to the Judge at the regular Chambers of the Court, in the Court House? A. Well, I can't say, because in such cases I do not see the papers again. I do not see the papers a second time, unless I look for them for subsequent purposes in the course of the suit, which is a thing I think I never did.

Q. Have you ever seen such an endorsement on papers other than the papers in these proceedings, which were filed in the County Clerk's office? A. Yes, sir, I have, but I can't recollect any particular papers.

Q. Where they had been used at the ordinary Chambers, at the Court House—when they had been presented there, I mean? A. I think not, but when they had been used in the Court House, and the Judge had stayed there after the Clerk had gone, which sometimes happens, the Judge goes into his private room, and the Clerk, Mr. Bea-mish, goes off, when the business of the day is over, and it is not unfrequent to find the Judge a minute or two after the Clerk has gone, and then the papers are left with him, if he desires.

Q. Have you any recollection of such an instance happening? A. I cannot specify a particular instance, but I can specify an instance very much like it; I don't recollect the title of the suit, but I can recollect the Judges, at least one Judge, with whom it happened—an instance of this kind—that papers for an injunction were handed to the Judge of the regular Special Term, where the Clerk was still present and the business going on, but the Judge could not make up his mind immediately whether he would grant the injunction or not. He took the papers home with him and kept them till the following day, when he returned them to the Clerk for filing, having granted the injunction.

Q. You have no knowledge or information, have you, that such was the case, in this particular matter? A. I have no knowledge nor no information concerning it, which I can recollect now.

Q. Do you remember the supplemental complaint, in the Chase suit, and an order for injunction which was granted thereon? A. I do.

Q. Have you any knowledge where that supplemental complaint was presented to Judge Barnard, and where the order of injunction was granted on it, by him? A. I have no personal knowledge.

Q. You drew the supplemental complaint, didn't you? A. I did.

Q. To whom did you give it, to be presented to Judge Barnard? A. My very decided impression is that I gave it to Mr. W. H. Morgan.

Q. Did he return to you with the injunction order? A. If he was the lawyer who took it, he did. I am pretty certain he was; the lawyer who took it returned to me within about an hour with the injunction signed.

Q. And where was that supplemental complaint drawn—at the Opera House? A. No, sir; that was drawn at the Erie railroad office, at that time, which was at the foot of Duane street, and I sent it from that office somewhere between eleven and one o'clock, between morn-

ing and noon of that day, and it was returned to me, I think, before one o'clock—certainly within an hour from the time I sent it up.

Q. Do you remember who took that injunction order to Albany?
A. No, I do'nt.

Q. Mr. John C. Sibley has testified that he took it to Albany? A. I have no doubt he did.

Q. Is it possible that he went to Judge Barnard to procure the order? A. I don't think it is in the least likely.

Q. Your recollection is quite clear on that point? A. Well, if Mr Sibley should say he did so I should certainly believe him, but I should hardly believe anybody else but Mr. Sibley or Judge Barnard, who asserted that such was the case, because it is extremely improbable.

Q. Had you been informed that Judge Barnard was in Poughkeepsie at any time on Friday, the 6th of August? A. I can't recollect.

Q. You have no recollection at all on that point? A. On what point?

Q. On the point as to whether you had been informed he had been in Poughkeepsie on Friday, the 6th day of August? A. I have no recollection on that.

Q. Do you remember telling Mr. Sterling, that Judge Barnard was, or had been, in Poughkeepsie on that day? A. I do not.

Q. Did you hear anything as to a telegram being sent to him in the name of James H. Coleman, on Friday, the 6th of August, at Poughkeepsie? A. Did I hear on that day?

Q. Yes, sir. A. I don't think I did.

Q. Are you positive on the point? A. No, I am not absolutely positive; I understood in some way, I can't tell how, that Judge Barnard was out of town, but I don't believe that I knew where he was, and yet I may have known, that is, I may have heard, where he was; my present impression is that I simply understood he was out of town; I think I might have inferred that he was likely to be at Poughkeepsie, from the fact that his relations live there, and I may have heard that Mr. Coleman sent for him, in some way; I am stretching my recollection to the utmost to say that; but I think it is possible.

Q. You think it is possible that you heard that Mr. Coleman had telegraphed for him? A. Yes, sir; I think it is possible; I have no definite recollection on the subject whatever.

Q. When did you yourself first go to Albany? A. I suppose you mean in relation to this business.

Q. Yes, in relation to this business? A. I can't recollect the date, but it was sometime in August, after Gen. Banks and Gen. McQuade had been put in possession of the railroad, which was a good deal more than a week after the appointment of Messrs. Fisk and Courter as Receivers.

Q. How long did you stay there at that time? A. One day.

Q. And do you remember when you went there the next time? A. I am very positive, although not absolutely certain, that I didn't go again until the 6th of September. The reason that I am not quite

certain is, that meanwhile I went to Washington county, and I may have barely passed through Albany, though I think I went by the way of Troy; at any rate I didn't stop at Albany longer than to take the train or boat, if I went through at all until the 6th of September.

Q. Do you remember whether you drew the complaint in the Bush suit? A. Will you show me the papers?

Q. There is the complaint (handing paper to witness). A. Yes, sir, I did.

Mr. STICKNEY:

From the undertaking in the Bush suit, on file in the County Clerk's office, I will just note the following points: that Gould and Blanchard were the sureties, and the endorsement is, "Approved, G. G. Barnard, J. S. C.," "G. G. Barnard" being in Judge Barnard's handwriting. Will you please look on that bond, at the words "Filed August 2, 1869," and say whether or not they are Judge Barnard's handwriting?

A. I don't think they are; I think that is in the handwriting of some one in the County Clerk's office; indeed, I have no doubt about it.

Mr. STICKNEY:

I will note from the Receiver's bond in the Bush suit, produced from the files of the Clerk's office, the following points: That the bond is executed by W. J. A. Fuller, the Receiver, as principal, by Jay Gould and W. B. Blanchard as sureties, acknowledged before Edward Ensign, Notary Public, and endorsed on the outside "Approved, N. Y., August 14, 1869, G. G. Barnard;" "G. G. Barnard" being Judge Barnard's signature.

Mr. PRINCE:

You don't put either of those in evidence, except the parts you have stated?

Mr. STICKNEY:

No, sir. There is no need of our encumbering the record.

Q. You remember the fact, don't you, that the order appointing Mr. Fuller Receiver of certain stock in the Bush suit was granted by Judge Barnard? A. Yes, sir.

Q. And it was an order entered *ex parte*, wasn't it? A. It was originally. I believe it was confirmed on motion.

Q. Do you remember the fact, too, that a writ of assistance was granted by Judge Barnard in that same matter to the Sheriff of that county to help Mr. Fuller to get possession of that stock? A. I know that such a writ was prepared, although I never saw it again, but I presume it was granted. I don't know; I would rather see the writ.

Q. The writ does not appear on the files in the County Clerk's office. A. Then I will withdraw that answer, because I have no knowledge, and not even information that it was granted. I only

know that such a paper was prepared. I don't know that it was sent. I don't know what was done with it.

Q. Will you examine the papers in your office? A. Yes, sir.

Q. And if you have it, will you send the writ, or a copy of it, to the Committee? A. Yes, sir.

Q. In the Chase suit there were writs of assistance issued to the Sheriff of Albany county and to the Sheriff of Broome county, were there not? A. Yes, sir.

Q. And to the Sheriffs of what other counties? A. I am not certain that any other writs were issued. I know about those.

Q. What circumstances do you know in connection with the arrest suit—the arrest of Ramsay and others? A. I remember that such papers were prepared in our office, but I had nothing practically to do with them personally. I know that these papers were not ready when Mr. David Dudley Field left New York for Stockbridge, on the 4th of September, 1869. On that day, and before Mr. Field left, he showed me the resolution of the Executive Committee of the Albany and Susquehanna Railroad Company, authorizing us to commence proceedings. On Monday I left for Albany at a comparatively early hour, and, consequently, had nothing more to do with these papers. I went to bed about twelve o'clock on Monday night, and at that time none of the papers in that suit had arrived at Albany. On the following morning I found Mr. Morgan there with those papers, and he told me he had arrived there somewhere about one o'clock in the morning. There was some conversation about the manner of the arrest, and Mr. Morgan took the matter in charge, and he gave the directions which were given. On a previous occasion when I was examined about this matter, I testified that I said to Martin Conway, who took the papers to deliver to the Sheriff, that he was to tell the Sheriff to do his duty, and to say nothing more; but I afterwards discovered I was mistaken; that it was not I, but Mr. Morgan who gave those instructions to Mr. Conway, and I gave no instructions about the matter. Mr. Conway said that the Sheriff would not be at his office before nine o'clock, and I left him and Mr. Morgan to attend to that matter, and didn't interfere with it one way or the other. The next that I know about the order—in fact it had quite passed out of my mind—was that while I was down at the Albany and Susquehanna Railroad office, and was very busy, some one came and touched me on the shoulder and told me that the Sheriff—

Q. State here, if you please, what time that was, as nearly as you can fix it? A. Well, it was, I suppose, about half-past eleven—certainly it was a good bit before twelve—more than a quarter of an hour before twelve, according to my recollection. This is three years ago. Some one touched me on the shoulder and told me that the Sheriff had come there and had arrested Mr. Ramsey, Smith and Phelps, and that I was wanted to approve of their bail; that bail was offered for them, and the Sheriff wanted me to approve it. I went immediately into the room where I found those gentlemen and the Sheriff, and Mr. David Groesbeck, and I gathered from the confused conversation, I

can not tell from whom, that the Sheriff had made some objection to Mr. Groesbeck as security, on a technical ground; what it was, I do not now recollect; but I said immediately, "Mr. Groesbeck is perfectly satisfactory, and that will be all right." The Sheriff still hesitated, and said, "Will you approve the bond?" I said, "Certainly, certainly, that will be all right; I am perfectly satisfied with Mr. Groesbeck, if I am satisfied with anybody." I stayed there two or three minutes. The whole thing was over in that time, as I understood, and I left the room. I believe the Sheriff did not afterwards ask me to sign my name on the back of the bond, although I promised to do so. That is all I know about the arrest.

Q. Did you state that Mr. Groesbeck, or either of the other sureties, were incompetent in any way. I don't mean that you specified in what way, but did you state they were not competent sureties? A. I am very confident that I did not; as I said, some one had suggested that Mr. Groesbeck was not competent, in my presence, and I may have said this, "That may be so, but he is abundantly good enough." I may have gone so far as that, but I did not mean to express an opinion of mine, that Mr. Groesbeck was not a good surety.

Q. Did you use any expression to the effect, so far as you can recollect, that he was ineligible, or that either of the sureties were ineligible? A. I have no doubt that I used no such expression.

Q. Did you see Mr. David Dudley Field, at any time, go to the door of the President's room while Mr. Ramsey was in the hands of the Sheriff, and make any remarks to him? A. I certainly didn't; I don't believe he did anything of the kind.

Q. You didn't see Mr. Field come to the door of the room—

Mr. PRINCE:

I do not see the materiality of that.

A. I am very glad that the gentleman asked me the question, because this is one of those atrocious falsehoods which has been circulated by irresponsible persons, and which I have had no opportunity to contradict. I was on the spot, and knew it to be false; and if forty persons were to swear it to be true, I would not believe one of them. Nobody has ever ventured to make oath to the truth of the matter. It is a wicked invention, intended to prejudice Mr. Field. Of course, it can have no influence on Judge Barnard.

Q. You did not see him come to the door? A. No, sir.

Mr. PRINCE:

I do not believe that it is competent, at all.

Mr. STICKNEY:

That is all we propose to ask him.

The WITNESS:

I am very glad to have been asked the questions.

Q. You were examined on the hearing of the case, *The People vs. The Albany and Susquehanna Railroad*, and others? A. I was.

Q. Were you, on or about the fourteenth of August, 1869, present in Court, at New York, on the return of Sheriff Parr, to some writs of attachment that had been issued against some of the Susquehanna gentlemen, and in that proceeding, and did this colloquy take place?

Mr. PRINCE:

Ask him, first, whether he was present. He has not answered whether he was present.

Q. Were you present? A. Yes, sir.

Q. Did this colloquy take place, Judge Barnard saying, "I have been looking into this matter with some degree of care, and am of the opinion that J. H. Clute, signing himself as County Judge of Albany county, entertained jurisdiction of this matter, as a criminal contempt, well knowing that it was a civil contempt. I am not quite sure but he should be brought before me, to be punished for contempt." (Mr. Shearman.) "I intend to follow these men, as I have followed others. Four months ago we were in that suit, and they were finally overtaken as their coat tails were disappearing behind a safe. I shall follow these men, if it is necessary, if it is possible, and to the end of time." (Judge Barnard) "I have some years to sit on this bench, and would as soon devote them to this as to anything else." (Mr. Shearman.) "I am a young man, also, having, perhaps, forty years at my disposal, and I am willing to devote them all to the pursuit of these men."

Mr. CURTIS:

Whose testimony is that you read from?

The WITNESS:

It is from a newspaper; it is not from any testimony. What has been read is a report in an Albany newspaper, professing to give an account of some proceedings which took place about the 14th of August. It contains a number of the words used on that occasion, but it is a very loose report. What I said on that occasion, in reply to Judge Barnard, was, in substance, as follows: "I have no doubt, your Honor, that Judge Clute, was guilty of a contempt in this case. He undertook to discharge persons who had been attached, by the order of this Court, without giving notice to the parties interested in the contempt, which was a clear violation of the statute making his discharge void, and his whole action a gross violation of justice, and I do not intend that these men shall escape thus, whether by the assistance of County Judges, or otherwise. I intend to follow them, in the same manner in which I have followed others. Four months ago, certain parties, connected with another railroad company, chose to treat this Court with contempt; we pursued them under the orders of the Court, and they were finally overtaken by the Sheriff, just as their coat tails were disappearing behind a safe. I shall follow these men also, if it is necessary, to the very end of time" Judge Barnard's reply was about like this: "I have nearly eight years yet to sit on this bench, and I would just

as soon devote them to justice in this matter, as to anything else." I replied, "I am a young man yet; I think I ought to have about forty years longer to live, and, if it is necessary, and the Courts are open to me, I am willing to devote every one of those years to the pursuit of these men." I think that is as nearly correct as I can state it.

Q. You are still ready to do so, are you not?

MR. PRINCE:

I don't think that is material.

THE WITNESS:

There is no occasion, they have come down. I had only to devote about five or six days to it, and they came down.

Q. And your party went up? A. They went up. They came into the Court, and submitted to the jurisdiction of the Court.

Q. Are you sure that Judge Barnard used the word "justice," in that connection? A. Oh! I am not absolutely sure of any particular words, except his saying that he had nearly eight years.

Q. In relation to that same matter, when you were asked, on your former examination, "You have got the pith of it?" didn't you answer, "Yes"? A. I answered "yes," but I added other words, which the stenographer on that occasion, who was a very incompetent one, omitted to put down. The evidence in that case is not much more than two-thirds recorded, and of that two-thirds he has got the matter about as crookedly as ever I saw anything done.

Q. This book, from which I read that question and answer, is the case, on appeal, prepared in your own office, is it not? A. Yes, sir; but, of course, we could not go into a controversy over every little detail; we were very anxious to get that case settled in time to appeal before the next election came around, and although we put it in with all the errors of the stenographer, the other side got sixty days time to correct the case. If we had undertaken to correct the stenographer's errors, we would have taken six years; for that reason, we let it go with innumerable errors. What I said, in reply to the question, "You have got the pith of it," was substantially this, "Yes, sir," subject to the qualification which I have stated. Mr. Smith asks questions very rapidly and interrupted me before I got through talking, and the stenographer, perhaps not culpably, omitted to put down anything I said, after Mr. Smith began. I never would admit that that was a correct report which Mr. Smith referred to on that examination.

Q. Did you, during the course of this litigation, or your firm, get any orders from any Justice, other than Mr. Justice Barnard, or were any orders granted on any motion of your firm, by any Judges other than Mr. Justice Barnard, with the exception of the injunction order of Alonzo Everts, as far as you can recollect? A. Yes, sir; there were several.

Q. Can you name them? A. The very first order I got, was from Judge Barnard, I think. The second order was from Judge Parker.

In the next place came the other orders from Judge Barnard. Then some orders were made on our application, by Judge Hogeboom.

Q. Was there more than one, by Judge Hogeboom? A. I am not certain that there was more than one. Then orders were made by Judge Clerk and Judge Cardozo.

Q. Name them, if you please, as you go along, as far as you can?

A. Do you mean the dates?

Q. No, sir; just the suits, and what they were. A. An injunction was granted by Judge Clerke, in the case of Stanton Courter against the Susquehanna Railroad and others, on the 6th of September, 1867. An injunction was granted by Judge Cardozo, in another case.

Q. Do you remember what case? A. No, sir; I don't remember I can't find it (after examining papers he had in his hand).

Q. And the order granted by Judge Hogeboom, was on hearing, both parties being present, wasn't it? A. Yes, sir; though I think he made an order to show cause, but of that I am not quite certain.

Q. You are not certain as to that? A. The injunction granted by Judge Clerke covered the same ground as that granted by Judge Barnard, in the suit of Jay Gould against the Albany & Susquehanna Railroad Company, and also covered rather more than was in the Gould suit granted. Applications were also made for orders, to other Judges. Applications were also made to Judge Boardman, in the case of Stanton Courter, before Judge Clerke was applied to, for the same injunction, and he was about to sign it when said he was going to Norwich and could not hear a motion to dissolve, and therefore requested that we should go to New York and get some Judge there. I urged him, very strenuously, to grant us the injunction there, he being Judge of the Judicial district in which the road was situated, but he said he hadn't time to hear a motion on the subject, if one was made to dissolve, and that we must apply in New York.

Q. That action was in Broome county, wasn't it? A. Yes, sir.

Q. Could a motion in that cause be heard in New York county?

A. Do you mean a motion to dissolve the injunction?

Q. Yes. A. No, sir.

Q. How, then, would it have been easier to have a motion heard if the injunction were granted by the New York County Judge, than it would have been if the injunction were granted by Judge Boardman himself; couldn't the motion, in either case, have been heard in an adjoining county? A. I might very properly leave Judge Boardman to answer that question. I might supply an answer for him. There is always a Judge at Binghamton, holding Court continually. There is also a Judge at Owego, and the motion could have been made before him, and Judge Boardman was about granting an order absolutely, though, I say he was at first about to do it, but he preferred, if he granted an order, to make it only an order to show cause why it should not be continued. That order, if it were heard before him, would have to be made returnable at Owego, which was thirty miles from any railroad, at that time. At any rate, those were the reasons he assigned, and I had nothing to do with the soundness of them.

Q. Now, in the two Wilbur suits, the Chase suit and the Bush suit, were either of the parties plaintiff, residents of New York county?

A. No, sir.

Q. In the two Wilbur suits and in the Chase suit, was any party in the suit a resident of New York county? A. Not that I know of.

Examination by Mr. CURTIS:

Q. How long have you been in practice in this city? A. About twelve years.

Q. How long have you been engaged as counsel of the Erie Railroad Company? A. About four years.

Q. How long before his death had you known James Fisk, Jr? A. I have been more or less associated as counsel in this business for six years, but had never been his attorney of record, except for about four years.

Q. Does the activity of Mr. Fisk here, in business, and his residence go back for six years? A. I think it goes back seven years.

Q. How long have you known of him, as counsel, connected with Mr. Gould—about the same length of time? A. I, personally, have only been connected with Gould since I became a counsel, to some extent, for the Erie Railroad Company. My partners were his counsel before that time.

Q. Now, in regard to the Susquehanna litigations, so called, or any order made by Judge Barnard, in them—do you know of any order made in any of those matters, by Judge Barnard, signed by Judge Barnard, that was not granted on adequate and proper papers? A. I do not.

Q. Do you know of any orders, signed and granted by him, in any of those cases, which, on the papers presented to him, he could rightfully have refused as a Judge? When I say, do you know of any, I ask your opinion? Do you think he could rightfully have refused, under the circumstances, and on the papers exhibited, to sign any one order that he signed in those cases? A. I think there were one or two which involved questions of pure judicial discretion, and as other Judges have sometimes refused to sign such orders for me, though they have signed them for other people, I felt some hesitancy about questioning their action in saying they were not rightfully refused. That is the only reason why I hesitated.

Q. Excepting, so far as he acted in matters which were purely discretionary, do you think that he could rightfully have refused to grant the orders? A. I do not.

Q. Take, for instance, the order appointing Messrs. Fisk and Courter Receivers, on the papers presented on that case; don't you think that, as a lawyer, it was obligatory upon him to appoint Receivers in that case? A. Yes, sir, I do; I think that was not a case, in any fair sense, for the exercise of mere discretion. I think that the papers there showed a case in which the Company could not run an hour without appointing Receivers—could not safely run an hour.

Q. So that there was a pressing, immediate necessity for putting the

road into the hands of Receivers? A. The papers showed so, and that was my own honest belief at the time.

Q. Wasn't that the ground on which the Directors of the Company, or a majority of them, who instructed you and acted with you, gave their consents and signatures? A. That was. Allow me to explain about the signatures.

Q. Yes. A. There was not absolutely a majority who signed. Precisely one-half of the Directors expressed in writing their concurrence in that action. One other Director was not present, but the other Directors assured me that he was with them—all of them—the seven; that they had seen him that day; that he entirely concurred in their action; that he would have come down that day from Albany to unite with them in the application, but he was detained by private reasons. That would have made a majority of the entire Board.

Q. Now, sir, do you know of any conspiracy, collusion, or connivance of Judge Barnard with Fisk & Gould and Field & Shearman, or any one else, to wrongfully, corruptly, and improperly place the Albany and Susquehanna Railroad in the hands and control of Fisk & Gould? A. No, sir; I neither know that, or believe, nor ever did believe it, but know the contrary.

Q. Was there any reason why, when you had occasion to obtain a Judge's order, you preferred to go to Judge Barnard rather than to any other Judge? A. No, sir; my preferences were to go to any other Judge rather than to Judge Barnard.

Q. Well, if you have no objection, I will ask you to state the reason; if you have any objection, I will not ask you? A. No, sir; I have no objection. I didn't suppose Judge Barnard to be friendly to myself.

Q. To yourself? A. To me, personally. That was one reason, but a more important reason—for I have never allowed that to influence me very much, if I had, I should have had very little to do with Judges, for I generally thought that most of them were not friendly—the more important reason was that notwithstanding that unfriendliness I felt it a duty that I owed to every Judge to avoid anything, as much as possible, that would involve him in any trouble, or avoid any foundation for public clamor, if I could help it; for I knew that a great deal of public clamor had been raised, at this time, against Judge Barnard, on account of the supposed connivance, or something of that kind—something similar to that which you questioned me about in the other matters. So, being anxious to avoid that, I did not go to Judge Barnard for orders, and I desired to protect him against the consequences of any unnecessary clamor. It was for that reason that I took the journey out to Binghampton, to find a good Judge there who should grant the order in the Courter case, when I could have got it from some Judge at home. I took all the trouble to go out there for that very purpose, though I hadn't the slightest doubt that I could, with the greatest propriety, have applied to any Judge in New York. It was for that reason that I took pains to get an order from Judge Clerke in the litigation; and in many other cases I have repeatedly taken a great deal of pains to

go to other Judges rather than to Judge Barnard, because I felt that I owed it to him, and to other Judges, to avoid any cause of complaint against them.

Q. Do you know of any relation or connection in which he stood with Mr. Fisk or Mr. Gould which would have made that a reason for their applying to him? A. Render it a reason for applying to him?

Q. Yes, sir. A. No, sir.

Q. It would have been a reason with you for applying to him? A. No, sir.

Q. In the case or cases in which they were interested? A. I knew that Judge Barnard was a friend to Fisk and Gould, in a social way, and that was all; but that was a reason for not applying to him.

Q. Did they ever offer to you any reason why you should go to him for orders in cases in which they were interested? A. No, sir; I don't think I ever went to him for that purpose.

Q. Now can you state any instance in which Judge Barnard has made a decision in a case in favor of the Erie Railway Company, within your practice? A. I don't know of any such instance, and my impression is that he has decided every case which we have allowed to get before him, against the Erie Railway Company. I thought his decisions were sometimes rather strong against us.

Q. In the dialogue of conversation that has been testified to, between yourself and Judge Barnard, who were these men that you referred to by "these"? A. Persons who were under attachment—Ramsey and Pruyn; there may have been others.

Q. The persons spoken of, then, were those who had defied and broken the process of the Court? A. Ramsey, Pruyn, and Van Valkenberg.

Q. They were the persons who had set at naught the process of the Court? A. They were persons who, as I was informed, had declared they would not obey any order of Judge Barnard; I was acting under that impression; I can't say, of course, that I was correct; I made that speech under the impression that they had openly declared that no order of Judge Barnard should be obeyed in Albany county.

Q. Was any suggestion of their having used such language as that made in Court before Judge Barnard, or made in his hearing? A. Well, I can't say that it was; but the facts that were stated there were, that an order of Judge Barnard, holding these men to bail, was executed by the Sheriff, or attempted to be executed, and that immediately the County Judge, who, as I stated in open Court, was a mere creature and tool of the attorneys for Ramsey, Pruyn, and Van Valkenburg, had discharged them, without giving notice to the parties interested, in clear violation of the Revised Statutes, and without hearing any argument or any evidence whatever; and I stated that I thought that was a gross outrage, and used some strong language about it in the presence of Judge Barnard.

Q. And those were the persons that Judge Clute, the Albany County Judge—the persons who had set at naught the process of the Court in this district—those were the persons referred to in that con-

versation as "these men" were they? A. I was not referring to Judge Clute when I was speaking of "these men," but these three men who had, after being arrested, obtained, as I believed and stated, by collusion from a Judge, an order releasing them, and who had immediately fled from the State. Those are the persons to whom I referred.

Q. They had gone out of the State? A. Yes, sir.

Q. Had you any personal relations with Judge Barnard yourself? A. Not the slightest.

Q. Have you ever been to his house, except on business? A. Never, and only once upon that, and upon that occasion I didn't see him, and he refused to grant an order that I was applying for.

Examination by MR. VAN COTT:

Q. You have expressed the opinion that Judge Barnard felt unfriendly towards you. Did that arise from your having written an article on the Judiciary of New York City in the "North American Review" in July, 1867? A. I think it very likely that it did.

Q. You spoke of the unjust clamor against Judge Barnard. Did Judge Barnard understand that you thought that the clamor against him was unjust? A. I can hardly see how he could, because I had no communication with him on the subject.

Q. You stated that you preferred to go to other Judges than to Judge Barnard and Judge Cardozo for orders.

Mr. ANDREWS:

He didn't say Judge Cardozo.

Q. Then I will leave out Judge Cardozo. Did you understand what Judge your clients, Fisk and Gould, preferred to go to? A. That is a very vague question.

Q. I will repeat the question? A. Yes, just repeat the question. (By request the reporter read the question.)

A. Well I thought it very likely they might have preferred to go to Judge Barnard.

Q. You said that Judge Barnard had not made any decisions in favor of the Erie Railway Company. Hadn't Judge Barnard made various orders for injunctions and Receiverships in favor of Fisk and Gould? A. Excuse me, but I never said so. What I said was, that Judge Barnard had decided no cases in favor of the Erie Railway Company.

Q. Well, will you answer the rest of the question? A. As to the rest of the question, Judge Barnard had made several orders; Judge Barnard had made some orders in favor of Fisk and Gould, but I think up to that date not so many as he had made against them.

Q. You stated that the road could not have been run, I think, three or four days longer, or an hour longer, without the appointment of a Receiver. How long did the road run under Fisk and his co-Receiver? A. That involves a conclusion of law. Another rival receiver was appointed, and the consequence was that the road did not

run at all until the consent of the parties, the Governor intervened at their request, and he practically appointed two receivers and the road resumed its running.

Q. And how long did the road run under a Receiver? A. Several months—until the 1st of January following.

Q. And then it ran under the Ramsey board, from that time until the present, didn't it? A. No, sir.

Q. How has it run? A. It ran under the Ramsey Board for a very short time, and then the Delaware and Hudson Canal Company made an arrangement with our clients, which Mr. Ramsey didn't know anything about, by which Ramsey turned it over to them. It ran under the Delaware and Hudson Canal Company, from that time to this.

Q. The Ramsey board leased the road to the Delaware and Hudson Canal Company, didn't they? A. Yes, sir; Ramsey had been out of office a long time. Ramsey is not now, and hasn't been for more than a year, I think, or nearly two years, a director of that road.

Q. Why do you think your clients, Fisk & Gould, preferred applications to be made to Judge Barnard for orders? A. Well, it is a very common idea among clients, that if they can once shake hands with a Judge they will do better with him than with any other Judge on the bench, with whom they never shook hands. It is an idea which lawyers know to be preposterous, but which affects clients very much.

Q. You think they had got so far on with their intimacy with Judge Barnard as to have shaken hands once with him? A. I can't swear even to that, but I think very likely.

Q. Hadn't there been a considerable interval of time between the making of the orders by Judge Barnard against Fisk & Gould, and the commencement of the Susquehanna litigation? A. Yes, sir; something like a year.

Q. Don't you think it was during that year that Judge Barnard shook hands with Fisk & Gould? A. I do.

MR. VAN COTT:

That is all, sir.

MR. HILL:

I understand you to say that you think it probable that your clients prefer Judge Barnard. Can you state whether they ever expressed that preference for him, to you? A. Well, I think that Mr. Fisk did once, and perhaps twice. I used, generally, to tell him that I thought differently.

(Here the committee took a recess until 7.30 P. M.)

EVENING SESSION, March 9th, 1872.

Committee met at 7½ P. M.

JAMES P. LOWREY, called and sworn; examined by Mr. PARSONS:

Q. Are you a lawyer, and, if so, practising where? A. I am practising in New York city; office, No. 61 Wall street.

Q. Have you been counsel for the Pacific Mail Steamship Company, in any of their litigations or proceedings? A. I have.

Q. Do you remember some proceedings connected with that Company, which occurred in a suit brought by one William W. Goddard against Jacob Stanwood, in the Supreme Court? A. I do.

Q. State what the first proceeding in that suit was, to your knowledge, and how, if in any way, it affected the Pacific Mail S. S. Company? A. In the year 1868, the Pacific M. S. S. Co. was served with papers upon an application for the examination of the Company to ascertain whether they had in their hands any money belonging to Jacob Stanwood, against whom a judgment had been rendered in favor of Mr. Goddard in that suit.

Q. State, if you please, what subsequent proceeding was had in reference to that suit, so far as it affected the Pacific Mail Steamship Company? A. The officers of that Company who attended, pursuant to the order, were examined, and disclosed that the Company had in its hands, belonging to Jacob Stanwood, a sum of money amounting to about \$3,200, balance of money due, under the charter party of a ship which had been chartered by the Company, from Jacob Stanwood; and also a sum which might eventually become due upon the adjustment of a claim which was pending as to general average. Upon that examination the Court directed that the sum of money due as a balance of the charter party be paid over upon this judgment.

Q. About what was the date of that order directing the payment? A. That was dated about the 15th of June, 1868.

Q. What next took place? A. The next proceeding with reference to the suit, that came to my knowledge, was an application of the defendant Stanwood to open the judgment. But upon that application, it appearing that a certain sum was admitted to be due the plaintiff by the pleadings, the Court directed that the money which had been paid over by the Pacific Mail S. S. Company, on account of the judgment, be held applicable to the sum which was admitted to be due by the pleadings.

Q. What amount had been paid over by the Pacific Mail S. S. Company, under the order which the Court had made? A. About \$3,200 and odd.

Q. Was it the entire amount fixed as due at that time? A. The entire amount known absolutely to be due, being the balance of the freight money due under the charter.

Q. But not including the amount to be ascertained in the general average statement? A. Not including that amount.

Q. Proceed, and state what next occurred, if you please? A. The next that was known was about February 26th, 1870.

Q. State, if you please, first, when was the order made opening the judgment, and directing the application upon the amount conceded to be due by the proceedings of the amount paid by the Pacific Mail S. S. Company? A. That order was made in October, 1868; the next that was known was about February 26th, 1870, when Mr. Stanwood called upon the Pacific Mail Steamship Company with a certificate of adjustment of this claim for average, showing that there would be due to Mr. Stanwood about one thousand dollars and over, which Mr. Stanwood requested to be paid.

Q. Upon what account did he claim that it should be paid?

A. To him individually; the adjustment of the average showed that there was due under the charter to Jacob Stanwood, this sum of \$1,000.

Q. State, if you please, what, if anything, had taken place relieving the Pacific M. S. S. Company from the injunction which originally had been granted, restraining the payment?

A. No proceeding whatever had taken place, except the payment of this sum over.

Q. And when the order of the Court was made, directing the payment of \$3,200, was there any order restraining the payment to Stanwood?

A. There was an injunction in regular form—a proceeding of that kind restraining the Pacific Mail S. S. Company, from transferring or making any disposition of the money to any party.

Q. And that embraced this \$1,000, which the general average showed to be due? A. In my opinion.

Q. Proceed and state what took place from that point? A. When Mr. Stanwood presented this certificate, the Company referred him to me, as I had had all the papers.

Q. Was that the certificate of the average adjustors? A. It was.

Q. Was it made up upon the general average statement? A. Yes, sir; I told Mr. Stanwood that the difficulty about paying that money by the Pacific Mail Steamship Company to him, would arise from the fact that the original injunction which had been granted in 1868, was still in force, as respects this money which had been found to be due under the adjustment of the average, and also from the fact that the plaintiffs, Goddard and others, had notified us not to pay over the money; that we were in the position of having a certain sum of money, to which there were adverse claimants; that we would be obliged to have the consent of the plaintiffs in that suit for paying the money over to Mr. Stanwood, and also to have the injunction order, granted in 1868, vacated or modified; and on explaining this matter over to him, I desired that he should arrange an interview with his counsel.

Q. Between his counsel and yourself? A. Yes.

Q. Who was his counsel? A. He stated that his counsel was Rufus Andrews. He left, stating that he would arrange such an interview;

subsequently he came again, personally, with an order by the Judge who had granted the original injunction order in 1868, made *ex parte*, vacating that injunction.

Q. Who was that judge? A. Judge Barnard. I told him that the company would require, of course, a certified copy of the order, and that still the company were not relieved from the effect of the notice which had been given by the plaintiff, requesting the payment of the money, and therefore, although the injunction order itself had been vacated, the company could not, without the consent of these plaintiffs, pay over the money; I then again desired more particularly that an interview should be arranged with counsel, in order that I might explain the entire matter to him.

Q. Do you mean between Mr. Andrews and yourself? A. Yes, sir; he again left, stating that he would immediately go to Mr. Andrews' office and arrange an interview.

Q. When did you next see him, or any person representing him? A. About three-quarters of an hour after that he returned with a paper from Judge Barnard, entitled in the suit, which is among these papers.

Q. Will you look at the paper now handed to you and state whether that is the paper to which you refer? A. That is it, sir.

Q. Are you familiar with Judge Barnard's handwriting? A. I have seen it several times on papers in the Court.

Q. State whether that whole paper is or is not in the handwriting of Judge Barnard? A. I believe it to be so, sir.

Q. Had Mr. Stanwood, in either of these conversations, made any statement in reference to Judge Barnard, or in reference to any Judge, in connection with this transaction? A. When I mentioned to him the fact of the existence of this injunction-order of 1868, and showed him the paper, he stated to me that that could be fixed very easily.

Q. Is that all he said? A. And that the Judge was a friend of his.

Q. Did he mention the name of the Judge? A. I think not, sir; I think these were his words.

Q. Did he have before him, at the time, the injunction order? A. Yes, sir.

Q. And was it that of which he was speaking? A. Yes, sir.

Q. And by whom was that injunction order made? A. Judge Barnard.

Mr. PARSONS read in evidence the paper as follows:

"SUPREME COURT.—WM. W. GODDARD vs. JACOB STANWOOD.—
If the money is not paid under my order of this day, I shall imprison
the parties charged with contempt on Monday morning at the opening
of the Court.

"GEORGE G. BARNARD,
J. S. C.

"February 26, 1870.

"To Pacific Mail St. Sp. Company."

Q. Had there been any proceedings before Judge Barnard, charging the Pacific Mail St. Sp. Company, or any one else, as far as you know, with contempt, at the time this paper was written by Judge Barnard.

A. Not to my knowledge.

Q. Had any other order been made, as far as you know, at the time that this paper was written, except the order granted *ex parte* relieving the injunction made in 1868? A. None, to my knowledge, nor had any been communicated.

Q. Was there any notice to the Company, or to you, as representing the Company of any intention to obtain from Judge Barnard any such paper as this written by him. A. None whatever, sir.

Q. Have you stated, and if not, will you please to state, by whom this paper was brought to you. A. The paper was handed to me by one of the officers of the Company; Mr. Stanwood was just leaving the Company's office at the time; I was told Mr. Stanwood had just left the paper.

Q. And was that within about three-quarters of an hour of the preceding conversation which you have stated to have taken place between Mr. Stanwood and yourself? A. It was, sir.

Q. Did the Pacific Mail S. S. Company pay anything under this order of Judge Barnard? A. Under that paper do you mean?

Q. Yes. A. No, sir.

Q. Did you have any conversation with Mr. Stanwood, as you saw him leave the office of the Pacific Mail S. S. Company on the occasion when he brought this paper written by Judge Barnard? A. No, sir.

Q. Have you stated all the conversation with Mr. Stanwood which you had in connection with this transaction? A. Not fully, sir.

Q. On which occasion did anything transpire which you have not stated? A. My interviews with Mr. Stanwood were probably of half an hour's length on each of the two occasions during which I saw him.

Q. Was anything on either of these occasions said in reference to Judge Barnard further than what you have stated? A. I think not.

Q. Or said with reference to any Judge in regard to this transaction? A. I think not sir.

Q. Did that matter subsequently adjust itself, and if so, when was it, with reference to the date of this paper, written by Judge Barnard? A. I immediately communicated with the plaintiffs in the suit—that is with their representative and counsel—and informed him that Mr. Stanwood had made this claim, and that there was this much money to be paid to whomsoever it should belong, and he finally notified me that the plaintiffs would and did withdraw their claim to this money due upon the general average, and the money was thereupon paid to Mr. Stanwood.

Q. And when was that payment made? A. In the afternoon of the subsequent Monday—on the 28th.

Q. The 28th of February, 1870. A. Yes, sir.

Q. Look at the order and affidavit now shown to you, and state whether that is the injunction order granted in 1868, or a copy of it?

A. This is the paper containing the injunction that was served in 1868,

upon the Pacific Mail S. S. Company. (Affidavit and injunction order marked Charge 8 A.)

Q. Will you look at that paper now produced to you, and state whether it is a certified copy of the order of which you have spoken as being made by Judge Barnard, relieving the injunction order of 1868. A. It is.

[Put in evidence and marked for identification, and read as follows:]

"WM. W. GODDARD *vs.* JACOB STANWOOD.—At Chambers, Feb'y 26, 1870. *Present*, George G. Barnard, Justice. On reading and filing the affidavits of Jacob Stanwood and R. F. Andrews in this action, and on motion of R. F. Andrews, counsel for the defendant, it is ordered, that the injunction order granted by me in this action, on the 20th May, 1868, temporarily restraining the Pacific Mail Steamship Company, and their agents, from transferring or making any disposition of their indebtedness, due the said Jacob Stanwood, or in any manner to interfere therewith, be, and the same is, hereby vacated and set aside. A copy. Charles E. Loew, Clerk. [The seal of the Supreme Court.]"

Q. Did the Pacific Mail Steamship Company attend on the Monday morning referred to in the writing of Judge Barnard? A. No, sir.

Q. Were the affidavits of Jacob Stanwood and R. F. Andrews mentioned in the order of February 26, 1870, served upon you or upon the Pacific Mail Steamship Company? A. They were not, sir.

Q. And have you ever seen them? A. I saw them that afternoon; yes, sir.

Q. Where? A. In the office of the Chambers of the Court.

Q. Did you go up for the purpose of examining them? A. Yes, sir.

Q. And were they on file? A. They were; either that afternoon or Monday morning.

By Mr. NILES:

Q. Did you have notice of this motion? A. No, sir.

By Mr. CURTIS:

Q. Are you a member of the Bar Association? A. I am, sir.

Q. To whom did you first communicate these facts?

[The CHAIRMAN said that he did not see the materiality of this question, but if the counsel would state that it might possibly throw any light upon the subject of inquiry it would be permitted.]

[Mr. CURTIS said that he could not tell until an answer was given. If the answer was in one direction it might be very material; but he would withdraw the question.]

Q. What interest had the Pacific Mail Steamship Company, for whom you were counsel or attorney, in paying, or refusing to pay, the money to one person or the other? A. Not the slightest, except that

on whatever payments should be made they should be fully protected.

Q. Was not the Company protected by the order of Judge Barnard, discontinuing the previous injunction? A. In my opinion, no; because of the notice of the plaintiffs that that they claimed the money.

Q. Then why did not the Company immediately apply to Judge Barnard, or make some application to him, showing him why they were not protected? A. This paper was served about 2½ in the afternoon; I immediately communicated the fact to the counsel for the plaintiff, desiring to know whether he yet claimed this money, and received answer from him that they did not; thereupon I at once went up to the Chamber and the Judge was gone.

Q. You did not see him? A. I did not see the Judge on the Bench.

Q. Was he in the Court-room? A. Not to my knowledge.

Q. Did you seek him further than to go to Chambers and see if he was not on the Bench? A. I did not, sir.

Q. I understood you to say that the money was paid by the consent of the plaintiffs in the action? A. By their withdrawing from claiming the money.

Q. Did, then, the Pacific Mail Steamship Company lose, or suffer any injury at all, in connection with Judge Barnard's action in the matter? A. None to my knowledge, sir.

Q. Did you ever hear the plaintiffs make any complaint in respect to Judge Barnard's proceeding, or what he had done? A. As to the matter of February 26?

Q. Yes. A. No, sir.

Q. The Pacific Mail Steamship Company were mere stake-holders between the two claimants for this sum of money? A. Yes, sir.

Q. There was an injunction originally restraining the Pacific Mail Steamship Company from paying it. Then that injunction was dissolved—both of them being *ex parte* orders—and then when that injunction was removed, the money was paid by the stake-holder to one of the claimants with the consent of the other; is that so? A. That is so.

Q. Were both these orders—the injunction order and the order dissolving it—*ex parte*? A. It would so appear on their face.

Q. Do you know of any legal objection to a Judge dissolving an *ex parte* injunction which had been granted by another *ex parte* order? A. None, whatever, sir. I might state, though I do not regard it as material to this question, that the examination of the Pacific Mail Steamship Company's officers disclosed the fact that there was, as I said, this sum of money due under the charter party; that examination was had without my being able to attend to it in its entirety. The order upon the examination directing the payment of the money was made by Mr. Justice Ingraham, then holding Chambers, and the Company then informed me that, by their usage, the captains of vessels were allowed to draw upon the bill of lading for whatever balance there

should be upon the charter party. The captain of this vessel might have made such a draft, and it might be in the hands of some third party, and, therefore, they thought that that fact should appear to the Court before it should make its final order directing the payment of the money over. I applied to Mr. Justice Ingraham, on the ground that that fact had not been elicited during this examination, and procured from him a stay of proceedings under the order made by him directing the payment of this money, and an order to show cause why the order directing the payment should not be modified. But the plaintiffs, at the suggestion of the Judge, gave what the Company were willing to regard as security against any such claim that might be made, and thereupon that matter was dropped.

By Mr. NILES :

Q. Where is the order made by Judge Barnard requiring the Company to pay over this money to the defendant to which that notice refers? A. I never heard of any such order.

By Mr. TILDEN :

Q. What was that note from Judge Barnard founded upon? A. I would be wholly unable to answer that question.

By Mr. PARSONS :

Q. You can answer whether anything other had transpired upon which that could be founded than the order of February 26, 1870? A. The only order that ever came, to my knowledge, was this paper produced, which has been read.

Q. The order of February 26, 1870? A. Yes, sir.

By Mr. TILDEN :

Q. What was the date of the order Judge Ingraham spoke of? A. About June 16, 1868.

By Mr. PARSONS :

Q. The direction of Judge Barnard is addressed to the Pacific Mail Steamship Company. Had that Company received any other orders of the date mentioned in that direction than the order which is in evidence? A. None whatever, as I was informed by the Company.

Q. You were asked whether the plaintiff made any complaint of Judge Barnard's direction on the paper written by him which has been read. Did you have any personal interview with the plaintiff? A. As I said, I immediately communicated to the plaintiff's counsel the fact that Mr. Stanwood had presented a certificate of the adjustment of this average and had demanded the money.

Q. And your negotiation with the plaintiff was through his attorney? A. With the attorney or counsel. I did not see the plaintiff. I have no knowledge of the plaintiff individually.

By Mr. CURTIS :

Q. Do you know whether, before this note came down from Judge

Barnard Mr. Andrews had called at the office of the Company and asked to have the money paid over, and had received any answer; do you know anything about that? A. I do not, sir.

Q. Did you ever hear any officer of the Company say that Mr. Andrews had been there and asked for the money? A. At this time? I have never heard an officer of the Company make such an assertion; on the contrary; I was otherwise informed.

Q. Did you know that application had been made by any one at the office of the Company for the paying over of money to Mr. Stanwood, after the injunction had been dissolved, and that an answer had been given by an officer of the Company, which had been communicated to Judge Barnard? A. I have not been so informed.

Q. You never have heard anything on the subject? A. Not on that subject.

Q. You never have heard it said by any officer of the Company that a message was sent back from Judge Barnard from the office in relation to paying that money? A. No, sir.

Q. You never heard or understood that the Company, or some officer of the Company then in the office, made a reply to that application and sent a message of an insulting nature to Judge Barnard? A. I never heard of that, sir.

By Mr. PARSONS :

Q. At the receipt by the Company of the order made by Judge Barnard on February 26, 1870, dissolving the injunction of 1868, was there any proceeding to which the Pacific Mail Steamship Company were parties, pending either in the Supreme Court or before Judge Barnard, in which he had any jurisdiction at all, to make any order or direction against that Company? A. None that I was ever aware of.

[Paper marked for identification.]

The Court adjourned for the further hearing of this case until Friday morning next, 15th inst., at 10 o'clock.

In the matter of Charges against Hon. G. G. BARNARD, Justice of the Supreme Court. Before the COMMITTEE OF ASSEMBLY.

MARCH 15th, 1872.

ANDREW BOARDMAN called on behalf of the prosecution; examined by Mr. PARSONS :

Q. How long have you been a lawyer, practising in the city of New York? A. 27 years.

Q. Were you counsel for either party in a suit of Elmendorf against Savage, in the Supreme Court?

Mr. PRINCE :

What is this under ?

Mr. PARSONS :

Under the 7th charge.

A. I was counsel for Thomas Kane and Michael Kane, two of the defendants in that suit.

Q. What was the nature of the suit? A. A suit for specific performance.

Q. Was there any other suit growing out of that suit, or did that suit originate from proceedings in another suit? A. That suit was subsidiary to another suit in the Supreme Court, James Savage against Thomas Kane and Michael Kane.

Q. Fix now the date of the commencement of each suit? A. The suit of Savage against the Kanes was commenced the 16th of July, 1866, and it continued until May, 1870.

Q. And when did the suit of Elmendorf against Savage commence, and for what length of time did it continue? A. The suit of Elmendorf against Savage and others commenced on the 31st of October, 1868, and it continued until June, 1869.

Q. What was the contract, the specific performance of which was sought in the suit of Elmendorf against Savage, or what was it of which specific performance was sought? A. For the conveyance of a house and lot in the city of New York.

Q. And what was the cause of action in the suit of Savage against Kane? A. It was a copartnership suit for the purpose of winding up a copartnership, and the defence was to set aside a settlement which had been made, as was alleged by one of the partners, Thomas Kane, by fraud and indirection. It involved the copartnership of the firm of Savage & Kane.

Q. Who were the defendants in the suit of Elmendorf against Savage and the Kanes? A. The defendants were numerous, because it partook somewhat of the nature of a foreclosure suit as well; that is, it made all appear upon the record as parties to the suit, and Elmendorf, the plaintiff, was seeking for a specific performance of the contract. Savage and the Kanes were the parties who owned the property subject to a lease, which lease contained a contract for a conveyance of the property to the lessee for \$12,000 in cash.

Q. Were Savage and the Kanes then, the parties to the principal suit, together parties defendant to the suit of Elmendorf against Savage *et al*? A. Yes, sir; they were all parties to both suits, and, of course, in the Elmendorf case there were other parties as well.

Q. Who were the counsel in the case of Savage against the Kanes? A. Mr. White, formerly a Judge of the Superior Court. Ex-Judge White was the counsel of the Kanes. James W. Culver was the counsel for the plaintiff. Mr. John B. Haskin was the Referee.

Q. In which suit? A. In the Savage and Kane suit.

Q. Appointed by whom? A. I don't know. D. P. Ingraham, Jr.,

was the Receiver in that copartnership suit of Savage and Kane. The suit had been going on for some time before I heard of it; that is, the Savage and Kane suit. Judge White came to me and stated that he was about to go to Washington, and asked, as a personal favor, if I would act as counsel in the case until his return.

Q. For the Kanes? A. For the Kanes. I consented to do so, and he went. There had been no business of a reference done up to that time, nothing but adjournments. I commenced, therefore, with the first meeting of the reference at which anything had been done, unless to open the case on the part of the plaintiff. I think that had been done before. Judge White went to Washington, took sick, and died before he could attend to the case again, and the consequence was that I yielded to the request of the parties defendant in that suit to continue as counsel, and did so. Shortly—some time after that—Mr. George E. Walker, who was the attorney for the defendant, and had been the partner of Judge White and was related to him, disconnected himself with professional business, and that threw the whole matter very much upon me.

Q. Who did you represent, if any one, in the subsidiary suit of Elmendorf against Savage? A. After the suit of Savage against Kane had been going on some considerable time, Mr. Hill called upon me, with a lease representing Mr. Elmendorf, Mr. John L. Hill, who was with Messrs. G. R. & T. D. Pelton, and he showed me the lease, and said, what I had not known before, that there was this outstanding lease, with a contract giving his client the right to purchase, and said they were ready to close the matter by paying the amount, \$12,000 in cash, which was the amount of the price fixed upon between the parties. I looked at the lease, and it was very informally drawn certainly, but it was very clear also to my mind that it was a proper thing to be done; that is to say, that the parties to the contract ought to carry it out. I advised the Kanes to do so, and wrote a letter to Mr. Hill, I think it was—either to Hill or to Pelton—stating that we were ready to do so provided the amount of money should be put into the hands of the copartnership Receiver, inasmuch as I considered that this was copartnership property, although real estate, and that if he could get the consent of Culvers and Wright to that, my man would at once con- to a conveyance. The investigation showed that James Savage, who was a half partner in this copartnership, had a half interest; that he had conveyed to Culvers and Wright, or to one of them, in trust for the others, his interest in the real estate as security for their fees, though the deed was absolute in its terms.

Q. Was James Savage the plaintiff in the suit of Savage against the Kanes? A. Yes, sir. I had an interview with them, and they thought that the contract set forth in the lease was so indefinite that the Court would not compel its specific performance, and they raised the question, that they didn't believe that Elmendorf had the money, and that this was a way of gaining time. They refused to carry out the contract. The Peltons—Mr. Hill acting all the way through, how-

ever, so far as I ever saw—brought a complaint in the Supreme Court.

Q. Was that the suit of Elmendorf against Savage and the Kanes?

A. That was the one.

By Mr. CURTIS:

Q. Who was the plaintiff's counsel? A. The plaintiff's counsel was Mr. Hill, and the attorneys the Peltons.

Q. Will you permit me to interrupt your narrative. I desire that you shall resume it again in a moment. Was an order eventually made in either, and if so, in which suit, and if in both, state the fact—made by Judge Barnard, granting allowances and compensation to Receivers and counsel? A. Yes, sir.

Q. State, if you please, when that order was made? A. I will do so, sir. It would seem to me to have come in better in the course of the narrative?

Q. I desire that you shall resume the narrative after we show by the order what the point of the inquiry is? A. There were many orders, sir.

Q. Do you mean many orders granting compensation? A. Granting compensation, but they were provided for ultimately, however, I think, all of them, by the decree, but the orders themselves—there were several.

Q. Now, if you please, resume your narrative, and state the progress of the litigation so far as it bears on the orders made granting compensation to Receivers and counsel, or allowances? A. In this case as I said, Savage and the Kanes were represented. Mr. Ingraham was made a party defendant to the suit as Receiver.

Q. You mean the suit of Elmendorf against Savage? A. Elmendorf against Savage and a mortgagee—Mr. Ferrett, I believe, was the name. John C. Ferrett was also made a party. John C. Ferrett was a mortgagee. He had a mortgage, originally, of \$5,900. There were arrears of interest. He had commenced a suit, and obtained a decree of foreclosure, but the plaintiff, Elmendorf, had obtained control of that matter, so that the sale was suspended. It turned out, ultimately, that the mortgage, interest, cash, taxes and assessments necessary to be cleared off in order to give the purchaser on foreclosure a title, amounted to about \$7,600, so that the matter of interest to Savage and Kane, or to Culvers & Wright, representing Savage, altogether amounted to about \$4,400.

Q. You mean that on the performance of the contract, the specific performance of which was sought, the surplus that would remain coming from the \$12,000 to Savage and the Kanes, or the parties who claimed through them, would be \$4,400? A. \$4,400. Within a few dollars of that sum. On the commencement of the suit the plaintiff deemed it necessary to obtain an injunction to prevent any disposition of the property during the pendency of the suit, and he obtained an order to show cause, from Mr. Justice Sutherland, on the 31st of October, 1868, why an injunction should not be granted, and why the \$12,000 should not be paid into Court during the pendency of the suit, and to abide the event of the suit, granting, in the meantime, a

temporary injunction. I didn't deem it necessary to the interest of the Kanes to attend to that motion, because we had no intention—I recognized the right, and had no intention to make any disposition, and the payment of the money into Court seemed to be a proper proceeding on the part of the plaintiff. I knew, also, that Culvers & Wright intended to appear on the motion, and to maintain that it was not copartnership money, and that it ought not, therefore, to be that either the injunction be granted nor anything else done under that order. An order was made, however, and served upon me about the middle of February—I think the 15th of February, 1869—and instead of the money being ordered to be paid into Court, as the order to show cause ran, an order was made that it should be paid to Terence Farley—he was appointed by Judge Cardozo—as special Receiver, as he was called in the order. I don't know whether it is in order to say here that I practised in the old Court of Chancery, and that that, under the old system, would have been paid to the Clerk of the Vice-Chancellor, or to the Assistant Register, if it had been in Chancery, and his fee, I think, would have been \$1.50 for depositing the money with the Trust Company, and entering it upon his own books, and there would have to be an exemplified copy.

MR. PRINCE :

We want, I suppose, a statement of the facts, without saying what would have been in any other contingency ?

THE WITNESS :

Very well, sir. Not what would have been, but what was, the practice of that Court.

MR. PARSONS :

This bears, Mr. Chairman, upon the eventual proceedings in the litigation.

MR. PRINCE :

In giving a narrative of the circumstances, I don't see that it comes in.

By Mr. CURTIS :

Q. I understand that this order, made by Judge Cardozo, for a special Receiver, covered the sum of \$12,000? A. \$12,000.

Q. It was the copartnership funds, then in dispute, between the parties? A. Yes, sir; I maintain that, subject to the payment of the mortgage, it was co-partnership money; the \$4,400, that would have been left after paying it, was copartnership money, and not individual money; and that it ought to be paid into the hands of the co-partnership Receiver.

Q. That was the question in the case? A. That was the question in the case. I stated it as such. In the middle of February, that money was paid over to Terence Farley, that \$12,000, and he kept it until about the end of June, 1870.

By Mr. PARSONS :

Q. 1870 or 1869? A. 1869, sir.

Q. You stated in the middle of February, without specifying the year? A. The middle of February, 1869, was the time that the money was paid to Terence Farley, and the suits only lasted for three or four months after that. The whole matter was completed by June. There was but one motion in the case, and one trial; except upon the trial, there were several motions. The trial came on before Mr. Justice Barnard.

By Mr. CURTIS :

Q. What trial? A. The trial in the case of Elmendorf came on before Mr. Justice Barnard. The view that I had taken at the beginning was maintained by him. He found, as a matter of fact, that it was copartnership property; that Culvers and Wright had notice that it was copartnership property at the time that they had taken the deed from Savage, and that the parties were bound specifically to perform the contract. Thereupon, a proposed decree was served upon our firm, Benedict & Boardman, who represented the Kanes in this last suit. He decided, notwithstanding, that Culver & Wright, after the payment of the costs and expenses, should be paid \$1,500 out of the fund. I argued that matter before him.

Q. Do you mean as allowance or counsel fees? A. No; \$1,500 after the payment of costs and allowances; they should be allowed \$1,500 out of the proceeds, out of the \$12,000.

Q. Out of the \$4,400? A. Out of the \$4,400—well, out of the \$12,000. Of course, it would be out of the \$4,400. I argued that matter before him, and attempted to show that, under all the circumstances, the Kanes were entitled to one-half the money, and that to hand over to them \$1,500 out of this fund was quite incompatible with the decision that it was copartnership money, that it ought to be handed over to the copartnership Receiver. Still, when the decree was settled—the judgment was settled—it was settled just in that way, but as the judgment roll had the answer of Culvert & Wright in, and claimed only one-half the money, I made a motion to open the decree, which was done, and that error was rectified. Prior to this he had made an order that the Receiver, Ingraham, should have a counsel fee of \$600.

Q. In that suit? A. In that suit of Elmendorf against Savage. He had made an order that Terence Farley—

Q. Let me interrupt you for a moment. Was that order allowing Mr. Ingraham \$600, a special order? A. A special order.

Q. Have you a copy of it, or can you give us the date of its entry? A. I can not give the date of its entry; I think (referring to a document), yes, sir, the 7th of May, 1869. That is the copy, I think, that was served upon me; in addition to costs, of course.

Q. Who represented Mr. Ingraham in the suit of Elmendorf against Savage? A. Mr. Ira Shafer.

Q. Do you know anything of the personal relations between Mr. Shafer and Judge Barnard, either personally or by reputation?

Mr. CURTIS:

Stop a moment. The inquiry is, whether he knows anything of the personal relations between Ira Shafer, who appeared as counsel for Mr. Ingraham as Receiver, and Judge Barnard, either of his own knowledge, or by general reputation. I suppose that the gentleman really don't seriously mean to prove their personal relations by repute. In the first place, "personal relations" is immensely indefinite of itself, and to prove that by repute, seems to be going into a very conjectural kind of evidence.

Mr. PARSONS:

Are we to discuss objections?

Mr. PRINCE:

We will take it for what it is worth; of course, stating whether it is of your own knowledge, or by reputation.

THE WITNESS:

I know nothing of my own knowledge.

By Mr. PARSONS:

Q. Is there any general reputation on that subject that you know, and if so, will you please state? A. Yes, sir; the general reputation is that Judge Barnard feels very kind towards Mr. Ira Shafer, and that they have been very old acquaintances, and I think were brought up in the same neighborhood, and that he has felt disposed to do him all the good he could.

Mr. PARSONS read the order referred to by the witness, as follows:

"At a Special Term of the Supreme Court of the State of New York, held at the City Hall in the city of New York, on the 7th day of May, 1869. Present—Mr JUSTICE BARNARD.—JOHN P. ELMENDORF, *against* JAMES SAVAGE, and others. This action having been tried and decided in favor of the defendant, Daniel P. Ingraham, Jr., as Receiver, &c., as to the issues and claims made by him, and a motion having been made by his attorney for an extra allowance of costs, and after having heard Mr. Shafer for said defendant, and the respective counsel who have appeared for the defendants, Kane, Culver, Wright, and Savage, it is ordered, that the said defendant Ingraham, Jr., Receiver, be, and is hereby allowed the sum of five per cent. upon the sum paid by the plaintiff to the Receiver (\$12,000), amounting to the sum of \$600, as an extra allowance of costs, &c.

Enter—GEORGE G. BARNARD, *J. S. C.*"

Q. Will you state whether you appeared upon the motion for an allowance—the allowance to Mr. Ingraham? A. Yes; I appeared. There was a sort of general talk; it was not a special motion, it was

not made as a special motion on notice, but these allowances were made on a meeting that there was of the various parties, pursuant to a notice from the plaintiff's attorney. We came before Judge Ingraham, and discussed these whole matters.

Q. Judge Ingraham? A. Judge Barnard; and discussed these whole matters; I think they were not made on the spot, but within a day or so.

Q. Was Judge Barnard's attention called to the fact that in truth the entire fund in controversy was \$4,400, instead of \$12,000? A. Oh, yes, sir; it was several times called to his attention.

Q. Now proceed, sir. A. He gave a direction which, I think, never was embodied in the special order, but was embodied in the judgment, that Terence Farley should be allowed \$750 out of the fund as Special Receiver.

Q. When was that direction given? A. That direction was given on the occasion I speak of, but I cannot give you the date.

By Mr. ANDREWS:

Q. Is it in the form of an order? A. I never saw it in the form of an order, but it was embodied in the proposed judgment.

Q. Had Mr. Farley, as Special Receiver, done anything other than hold this fund of \$12,000, which had been paid to him in cash? A. He never did anything but that; he received the money, deducted his \$750, and then paid \$11,250 over to D. P. Ingraham, Jr.; I urged, before Judge Barnard, many considerations against this; that the Special Receiver ought at least to pay over—pay the mortgage, and to pay over such sums as he ordered by his decree to be paid, and that Ingraham ought to receive merely the residue, that is to say what would be coming to the copartnership, and I urged before him that it would inevitably lead to a charge on the part of Ingraham of another 5 per cent. on the \$11,250; but nevertheless the draft decree, the proposed decree served by the plaintiff's attorney, was settled with this alteration; the \$750 amounted to much more even than 5 per cent., and Gratz Nathan appeared as counsel for the Receiver.

Q. You mean for the Special Receiver? A. For the Special Receiver; and proposed an alteration in the decree or judgment, and that alteration, was made by Judge Barnard; the alteration that he proposed was that instead of the \$750 being inserted as a lumping sum, that this clause should be inserted—that he retain in his hands, out of the said fund, the sum of \$500, as and for his commission, fees, and allowances as such Receiver, and also the sum of \$250 for the expenses of such Receivership, including the employment of counsel in respect of acts heretofore done by him as such Receiver, and in respect of his proceedings under this decree; that was the proposed amendment, which I have in my hand, which was served upon me, and which was inserted in the decree as finally settled.

Q. Had any service been rendered by Mr. Nathan, or by any one as counsel to Mr. Farley, as Special Receiver? A. No, sir; he was not a party to any suit, nor to any motion, nor to any proceeding; he sim-

ply received \$12,000, kept it without interest, paid over \$11,250 to Mr. Ingraham, deducting his \$750 from the amount.

Q. Did it appear, in any proceeding before Judge Barnard, that any service had been rendered by counsel to Mr. Farley as Special Receiver, or that any service had been rendered by Mr. Farley, except as you have stated? A. It did not appear; it never was asserted or pretended.

Q. Proceed now, and state what further was done by Judge Barnard in the matter of compensation? A. It had been stated by a witness, on the trial of the cause, that the property was worth \$17,500, and Judge Barnard, taking that, as I suppose, to come within the meaning of the law in regard to matters in controversy, he made an allowance to the plaintiff for 5 per cent. on \$17,500, in addition.

By Mr. CURTIS:

Q. Which plaintiff? A. I am speaking entirely of the Elmendorf case at present. He made an allowance of 5 per cent. upon \$17,500, besides costs.

Q. Was that opposed? A. Yes—no, excuse me; no, it was not. It was not opposed, that is to say, it didn't come up by the way of a proposition for so much, as far as I can recollect, but all the parties meeting together, they claimed allowances—every one claimed an allowance, except myself, on the occasion that I refer to—and these allowances were noted by Judge Barnard, and orders were drawn accordingly. I don't think there was any special discussion in regard to the amount of allowances, or that anything was said in particular.

Q. On the hearing, or on the occasion of this discussion to which you allude, was it stated that the plaintiff proposed to have an allowance of 5 per cent. on \$17,500? A. That I don't recollect. I don't recollect whether that was stated or not. They asked 5 per cent. as an allowance upon the matter in controversy. I don't think the \$17,500 was mentioned, but it may have been so.

Q. What further allowance? A. Then he allowed to Mr. Ingraham 5 per cent. on \$12,000; that would be \$600.

Q. Do you mean that he allowed Mr. Ingraham that as Receiver? A. As Receiver.

Q. 5 per cent. on \$12,000? A. That was for the counsel.

Q. Ah, that you have already referred to? A. Yes, that I have referred to. The \$11,250 was paid over to Mr. Ingraham, and he had specific instructions finally, in the decree, as to exactly what he should do with it. It involved a few hours work; three or four, perhaps, altogether. He charged 5 per cent. on the \$11,250.

Q. Did Judge Barnard allow that to him? A. That was allowed to him; yes, sir.

Q. By the decree? A. Not by the decree; on the settlement of his account, not by the decree.

By Mr. ANDREWS:

Q. Was it allowed by Judge Barnard? A. Yes, sir; I will show how that was. He confirmed the Report.

By Mr. CURTIS :

Q. What stage in the case was this that you are now speaking of ?

A. The last; it was the very last order that Judge Barnard made which gave him the 5 per cent. on the \$11,250, and it was about the 18th of June, 1869.

Q. This was an allowance to him, as Receiver ? A. This was 5 per cent. on \$11,250 allowed to him, as Receiver.

Q. When he paid it over ? A. It was allowed to him in his account, as a part of his charges in his account.

Q. When he was ordered to pay over, that was allowed him ? A. No, it was a part of his account as Receiver.

By Mr. PARSONS :

Q. After he had made a distribution of the funds, the order was made confirming his account, as I understand it ? A. Yes, sir.

Q. And in his account he had charged 5 per cent. on the fund which was thus confirmed to him ? A. Yes, sir. Now, at the same time that I moved to correct the decree, and strike out the \$1,500 that had been allowed to Culvers & Wright, I made a motion for an allowance. The two matters came up together. I on that occasion made an affidavit, showing all these various matters, and I showed further, that the decree, as settled, required more than all the money that was remaining to pay that \$1,500, and that though Culvers & Wright had been declared to be in the wrong in relation to the matter, and my clients entirely right from the beginning, that the decree, as drawn and settled, took all the money that would be coming to my clients, and handed it over to Culvers & Wright, and that in the answer which they had put in they had merely claimed one-half, whereas this gave them the whole. I showed by figures that there was not the \$1,500 left, and that as I said was stricken out. At the same time I made a motion for an allowance, and the Judge asked me what allowance I thought I ought to have, and I said \$250. He expressed astonishment that he had not given me the allowance before, and I said I had not asked it, which was a very good reason for not giving it, and he took the paper containing the \$250, and struck the 2 out, and put 4 in, making \$450, and I struck the 50 out in his presence, and that made it \$400. Now the whole sum of the matter then was this. That \$750 went to Terence Farley, \$1,088.49 went to the plaintiff for costs and allowance, including 5 per cent on the \$17,500. To Ingraham, as costs and allowances \$676.21; and to Benedict & Boardman, as costs and allowance, \$475; and to Ingraham, as commission \$562.50, making altogether, \$3,552.20.

Q. Leaving how much of the fund ? A. There was left \$874.76 out of \$4,426.96.

Q. Was the last amount which you have named the real amount in controversy ? A. Undoubtedly; there never was any question as to the right of the mortgagee to his payment in full. Of course that is rather a question of law, I should say, than a question of fact; but that is just the fact in relation to it. And then instead of putting it in

the hands of Ingraham, I consented that there should be a division of the money. I had had enough of law in relation to this fund, and so \$437.38 was paid to the Culvers & Wright, on account of Savage's interest, he having a half interest, and \$437.38 was paid to myself for Thomas and Michael Kane, they having the other half. Savage had no costs allowed to him, very properly, I think, because he ought to have consented, in my view, to the arrangement that I mentioned, but the \$437.38 I paid over to Thomas and Michael Kane, and retained the \$475 merely for the costs and counsel fees in the whole suit. Now I have mentioned the case of Savage against the Kanes. That controversy went on.

By Mr. PRINCE:

Q. You are through in regard to the other? A. No; I am not quite through. This other comes in merely incidentally, as illustrating this matter of Elmendorf against Savage. The case of Savage against the Kanes continued, and finally was decided. Savage was allowed a certain sum of money—a specific sum in that co-partnership case, and the Kanes, by the judgment, took all the residue. Ingraham, who was the Receiver in that case, rendered his account in the case of Savage against Kanes. The first account that he rendered was in October, 1869, as Receiver. In that account he included no interest for the three years—he had had \$15,000—and a number of matters; but the matter that I want to call attention to as having reference to the Elmendorf case was this; that there was a charge in that account, of \$500, under the date of March 6th, 1869, as having been paid to Ira Shafer, for the trial of the Elmendorf case. The account led to correspondence with Ingraham in relation to the matter. It was the first time I had ever heard of this charge. The order allowing it had not been made upon any notice, and I objected to it as an *ex parte* and unauthorized proceeding, and called attention to the fact that Mr. Ingraham had been allowed already, and had received, \$600 for a case which I stated, in my opinion—stated to Ingraham, and to Shafer, and to Judge Barnard afterwards—in a case in which it seemed to me it was the duty of the Receiver simply to stand aside and submit his right to the Courts, inasmuch as all the parties whom he represented were represented by counsel, and carrying on well defined litigation in the Elmendorf case, with which he really had nothing to do, in any view. I asked him to call the attention of Mr. Shafer to it, and I wrote to him a statement showing, in the name of Mr. Walker, the attorney, the letters were written by me, but signed by Walker, as he was the attorney in the case; I showed him a statement that if they took this \$500, not only would Thomas and Michael Kane receive nothing for parting with their property, but that they would be out of pocket, and that they would much better have thrown their interest away entirely than to have troubled themselves with it if that was the result. Mr. Ingraham said that he had paid the money, and paid it on an order of Judge Barnard, and he should not yield, and that if I did not allow his account he would make a motion—he would present a petition to

the Court to have his account passed, and that I must take my objection there in the regular way, by exception. He presented his account.

Q. To whom? A. He served it on me; he served the account on me, with a petition—a copy of a petition which he should present. He had charged that item; I have the two accounts here; he had charged that item from a fee to Shafer on the trial of the cause, to a fee to Shafer on the motion for an injunction and to pay the money into Court, and that was the form in which it appeared in his settled account. We appeared before Judge Barnard. I had before that offered to leave it out, informally, either to Mr. Justice Ingraham or to Mr. Justice Brady, and stated that, as to that item, my client was very tired of litigation, and we would confine ourselves to that item, and I would take the informal opinion and decision, without any order about it; but he did not like to do that, and so I had the word of Shafer that if Judge Barnard decided that he ought not to press that \$500 he would not keep it; he would pay it back. And with those understandings I appeared before Judge Barnard; I presented to him the facts which I have presented here. The manner in which this fund had been used up; the fact that my client, as the result of a litigation in which he was declared to be in the right from the beginning, had received only \$437.38; the further fact that he was entitled to whatever balance there was in the hands of the Receiver in the copartnerhip suit, and that if the \$500 was taken from him he would not only have lost the whole that he ought to have had as the price of his interest in this real estate, but that, in addition to that, he would be out of pocket \$64.62, and I appealed to the Judge, that, upon any principle, a man ought to have a little of something left when he turned out to be right in the litigation. On that argument, which was in a very quiet, friendly way, Mr. Ingraham appeared and Mr. Shafer appeared. Mr. Shafer made no remarks except that if the Judge thought he ought to pay that money back he would do so; and the Judge took the papers and the next day he passed the accounts just as they were, including that \$500, and so the result of it was that, though Thomas and Michael Kane were charged nothing for the litigation, beyond the \$475 that was allowed in the suit itself, they were out of pocket \$64.62, in addition to all their interest in that property.

Q. You say that Mr. Ingraham told you that the \$500 which his account stated to have been paid to Mr. Shafer, had been paid under the order of Judge Barnard; is that a fact? A. I never have been able to find the order; I asked Mr. Ingraham to furnish me the order, but I think he did not; I have here what was furnished to me by either Mr. Shafer or Mr. Ingraham, but it does not seem to me—the endorsement ought not to be regarded because it is an endorsement by my clerk—but that is what was finally sent to me (producing a paper).

By Mr. CURTIS:

Q. What is that paper? A. It is a paper purporting to be an order allowing the \$500, and to bear date of March, 1869. That was sent

to me—I am sure, now—sent to me by Ingraham, because I requested it quite a number of times before I got it, and there was finally a few words of unpleasantness about his not sending it.

Q. And was this regularly served upon your firm as an order made by Judge Barnard? A. Well, it was just in the way that I mention. On receiving his account I asked for a copy of the order, so that I might move to take some steps in relation to it, as it was *ex parte*, for its reconsideration, or such steps as I might deem proper; and finally this was sent to me by Ingraham, as the order which had been made.

Q. What is the date of that order? A. The 6th of March, 1869.

Q. Does it purport to have been made by Judge Barnard? A. It does, sir; and the fact that they had made this claim, and the fact that I had never received any notice of the proposed order, was brought to the attention of Judge Barnard very clearly, on the last occasion of which I have spoken, when he confirmed the Receiver's account.

Q. You have stated that Judge Barnard confirmed the Receiver's account, including the credit to Mr. Ingraham of \$500 as paid to Mr. Shafer? A. Yes, sir.

Q. Did he make an order confirming the account? A. Yes, sir.

Q. Will you give, if you please, the date of that order? A. I thought I had it here, but I don't seem to have it.

Q. State as nearly as you can the date of that order? A. Oh, this was the order of the Savage case; yes, sir.

Q. The order in the case of Savage against Kane, confirming the account. A. Second of May, 1870, was either the date of the order, or the date on which I received it.

Q. You have stated that the account of Mr. Ingraham in the suit of Elmendorf against Savage, in which he deducted, as his fees as Receiver, \$562.50, was confirmed by Judge Barnard? A. Yes, sir.

Q. Have you the date of his order of confirmation? A. I think not, sir. I am a little doubtful in relation to how that was done. I would not like to be considered as speaking in relation to that matter with any certainty. I know that the allowance was made—that this account was deducted, and I know that that fact was brought very distinctly before Judge Barnard on this last matter of \$500, but I am not positive as to the manner in which that affair of the commissions was brought before him—whether it was specifically brought before him or not.

Q. Was the fact that Mr. Ingraham had received, and that the fund had been put to the expense of that \$562.50, used before Judge Barnard as a reason for disallowing the \$500 to Mr. Shafer? A. Yes, sir; the whole of the facts were brought, including that one, so as to show the manner in which that fund had been used up, and that if the last \$500 was allowed, that my clients would be out of pocket, besides losing the property.

Q. Have you now stated the general facts of the litigation? A. I have sir.

Cross-examination, by Mr. CURTIS :

Q. Did you act at all in the copartnership suit of Savage against Kane? A. I acted throughout, from the time that Judge White went to Washington and became sick; I acted from that time to the end of the suit, as counsel.

Q. Now that was a partnership suit for winding up all the partnership affairs? A. Yes, sir.

Q. What property besides this real estate did that controversy involve? A. It involved simply certain notes. The partnership assets and affairs had been sold out, and notes had been given for the purchase price, and the controversy arose upon those notes and their amount, with the exception of a very few claims that the copartnership had; the business was a peculiar one, and did not involve large credits; and there was between fifteen and sixteen thousand dollars worth of property in the hands of the Receiver, which was substantially the subject matter of the controversy.

Q. Over and above the real estate? A. Over and above this real estate.

Q. This real estate, or the interest in real estate, consisted of a lease? A. No, sir. Savage and Kane had been the owners of the fee, and they had leased the property to a party, with an agreement in the body of the lease that the lessee might purchase it for \$12,000. They were the owners, therefore, of the fee originally, but James Savage had made a conveyance of his interest in the property to Culvers & Wright.

Q. The whole of this copartnership property being the interest in real estate, to whomsoever it belonged, and the notes in which the assets of the partnership had resulted, were placed in the hands of Mr. Ingraham as Receiver? A. My impression is—I know that the real estate is not; Culvers & Wright had claimed from the beginning that it was not copartnership property, and Ingraham had not taken possession of it as copartnership property, but had allowed the Culvers and Wright to receive half the rents.

Q. What was the fund then in the hands of Mr. Ingraham? A. The proceeds of the notes which had been given by a person of the name of Peck—I think that was the name—as the purchase price of the copartnership property.

Q. Ingraham collected those notes and converted them into money, did he? A. He collected the notes.

Q. Amounting to —? A. A little over \$15,000.

Q. And then, when the suit for specific performance came on, Elmendorf against Savage and Kane, he was directed to pay over everything in his hands to Farley, as Special Receiver? A. No, sir; he was not directed to pay anything over to Farley, as Special Receiver. Elmendorf was directed to pay the \$12,000, which was the price of the property, to Farley, as Special Receiver, under this order of Judge Cardozo's.

Q. The fund arising from the notes remained in the hands of Mr. Ingraham? A. Yes, sir; that was in the other suit—Savage *vs.* Kane.

Q. And that constituted the basis of his account when he came to

render it? A. Yes, sir; when he came to render the account in the case of Savage against Kane.

Q. Now, in relation to the allowance of \$500 made to Mr. Ingraham, as counsel fee for Mr. Shafer, I understand you to say that, when his account was finally passed, it was charged as a fee paid, or stipulated to be paid, to Shafer for his services, on the motion that was argued, or for what was it? A. In the first account rendered by Ingraham, it was charged, as a fee, to Shafer, on the trial of the Elmendorf case. In the second account that was rendered, it was charged, as a fee, to Shafer, on the original motion to pay the money into Court.

Q. Was it not also charged as covering the service of drawing the complaint and getting the injunction? A. There was no complaint and no injunction by Ingraham. Ingraham did not bring any suit.

Q. No—the Elmendorf suit? A. The Elmendorf suit was not brought by him; he was simply a defendant in the case.

Q. One of the parties? A. Ingraham was one of the parties, and Shafer appeared for Ingraham.

Q. Now, in regard to Mr. Ingraham's commissions, those were allowed as five per cent. on the amount of his account? A. I have not spoken of his commission in the case of Savage and Kane; I have simply spoken of the commissions in the Elmendorf case; they were 5 per cent. on the \$11,250 that he received from Terence Farley.

Q. And the allowance to Elmendorf, the plaintiff in the specific performance case, was an allowance for counsel fees in that action? A. In that action, 5 per cent on \$17,500.

Q. Were not all of these several orders, settling these accounts and making these allowances throughout, appealable matters? A. In my judgment they are.

Q. Was any appeal taken? A. None whatever, sir.

Q. When the final decree came to be made, which resulted in the manner you have described, it was consented to, was it not? A. No, sir; it was not consented to.

Q. I don't mean previous to its being finally settled, because I understand you to say that it was argued and discussed throughout? A. Yes, sir.

Q. But after it had been settled and the decree passed—perhaps I ought rather than to say consented, to say it was acquiesced in? A. It was not appealed from.

Q. And the moneys were respectively paid all around, as they were directed to be? A. They were, sir.

Re-direct examination by Mr. PARSONS:

Q. You have stated that in your opinion the orders granting allowances to which you have referred, were appealable. Were you, at the time those orders were made, aware that in the case of Ames v. Ames, or in any case prior to that time, the General Term of this District. Judges Barnard and Cardozo being upon the bench at that time, had decided that such orders were not appealable? A. It was my impres-

sion, and the impression, I think, generally, of the profession at one time, that these orders were not appealable, and it was not until the Court of Appeals had made a decision on the subject, altering that, that I thought there was any appeal from such orders. Now, whether that was at this time or not, I don't know; I would have to look in order to determine, but I know at one time I did not consider such orders appealable. I have taken the ground myself, at General Term, that they were not.

Q. You have stated in that the second account of Mr. Ingraham, the \$500 to Mr. Shafer was charged as being a fee paid him for services upon the motion for injunction in the suit of Elmendorf against Savage? A. The precise words are these: I find that I have them.

Q. Will you permit me first—upon the motion upon which it was ordered that the \$12,000 be paid to Terrence Farley as special Receiver; what did Mr. Shafer do upon that motion? A. I was not present at the motion, did not deem it necessary that I should be, and it seemed to me to be a motion that was against the interest of the Receiver to oppose; that is to say, I did not see any excuse for his appearing to oppose it.

Q. Did he oppose it so far as you ever heard? A. It is recited in the order that he did oppose it, and I have no reason to suppose that he did not, though I don't know anything about it.

Q. Will you also now state, if you please, what was done by Mr. Shafer upon the trial of Elmendorf against Savage? A. Mr. Shafer took a very active part in the trial of the case; I think he talked more than any one else.

Q. Was there anything unusual or extraordinary in that suit? A. It seemed to me not. It seemed to me very clearly a case where a party, while counsel might doubt on looking at the paper, for a moment, might pause for a moment, that it was a very clear case, both on the paper itself, and on the equities of the matter, for a specific performance, because the tenant had gone on on the strength of this agreement, and had made valuable improvements on the property; spent some \$4,000 or \$5,000 on it; and the question of copartnership seemed to me to be free from doubt, because the very persons who took the conveyance Culvers & Wright, were the attorneys and counsel of Savage, and knew all about the affairs of the copartnership. I find I have here an extract from both the accounts of the Receiver, the one first produced; and the one second produced. I don't know that it will help you at all.

Mr. PRINCE:

You have stated that, I think.

THE WITNESS:

I have the exact language here.

By Mr. CURTIS:

Q. You had no doubts, then, at the time when the decree was

finally settled in the specific performance suit, that these various matters covered by that decree were appealable, had you? A. I don't know now whether I had a doubt as to the costs or not. I know that my firm opinion at one time was, that this matter of allowance was purely discretionary, and it certainly was so treated in our district, by the Supreme Court, and at what time I changed that view I cannot tell; whether I had changed it before then or after, on account of the decision of the Court of Appeals, I don't know.

Q. An appeal from that final decree to General Term would have brought up the whole question, would it not, at once, as to whether they were or were not appealable? A. Yes, sir; undoubtedly. The General Term at one time decided that they were not appealable, and of course I would not in the face of that decision have carried it up.

Q. You don't know that they had so decided before that, do you? A. Oh, yes, sir; I am quite sure that we all knew that. I say quite sure, I am not prepared to put my finger upon any decision in respect to the matter, but I was firmly of opinion, at one time, that such orders were not appealable, and I certainly should not have advised an appeal from those orders, but whether at that time I had become enlightened by the decision of the Court of Appeals or not, I don't know; I cannot fix that.

By Mr. PARSONS:

Q. Don't you remember the case of *Ames v. Ames*, where the Referee to whom the allowance was ordered was Mr. Peter B. Sweeny, whose counsel, at General Term, was Mr. Ira Shafer? A. I recollect about that case; yes, sir.

Q. And did not the General Term in this District, in that case, Judges Barnard and Cardozo being of the Court, hold that such orders were not appealable? A. That was my information at the time.

Mr. PRINCE:

I suppose if there is such a decision, it is a matter of record.

Mr. PARSONS:

The order was put in evidence by Judge Cardozo, and will be an exhibit in their investigation, so that for all other purposes in the examination of Mr. Boardman, it may be considered as before the Committee.

By Mr. CURTIS:

Q. Do you know anything about the facts of that case that you have reference to? A. I do not. I only know from general report; I have certainly nothing that ought to weigh with any one in regard to the facts of that case.

Q. Don't you understand from general report, that it was a case of a Referee to sell property? A. I know I paid some attention to it at that time, but inasmuch as I considered that whole matter wiped out

by the decision of the Court of Appeals, I get rid of those things as fast as I can after they are once decided.

THOMAS D. SHERWOOD, a witness called on behalf of the prosecution, sworn and examined by Mr. Stickney:

Q. You are a counsellor at law? A. Yes, sir.

Mr. PRINCE:

Upon what is this?

Mr. STICKNEY:

It is under the last charge.

Mr. PRINCE:

The 8th charge.

Mr. CURTIS:

What portion of the charge?

Mr. PRINCE:

The 8th charge, I believe, is the one of indecorous conduct of the Justices.

Q. How long have you been a counsellor at law in this city? A. 20 years, I think.

Q. Do you remember an election for Directors of the N. Y. Pier and Warehouse Co., in 1868? A. Yes, sir.

Q. At what date was the election appointed to be held? A. 24th of October, 1868.

Q. Where was the election to be held? A. At my office, 35 Wall street.

Q. And at what hour? A. 12 o'clock.

Q. Do you know Mr. Frederick A. Lane? A. Yes, sir.

Q. Who is a Director of the Erie Railway Co., or has been? A. Yes, sir.

Mr. CURTIS:

Does this matter that you expect to prove come this side of the 1st of January, 1869?

Mr. STICKNEY:

No, it does not; it is the latter part of October, 1868.

Mr. PRINCE:

We have concluded, as far as any conclusion has been arrived at in the meantime to receive evidence of events that took place at any time, subject, of course, to future decision.

Mr. CURTIS:

I don't know whether this is the proper time for me to—

Mr. PRINCE:

We shall be very glad to receive, as it was understood at the last session, the brief which I believe both sides proposed to put in on that subject, and in the meanwhile to take the testimony.

Mr. CURTIS:

The point necessarily involves the question of a great expenditure of time of the Committee, if evidence is to be offered according to the charges as they are laid out, and one after another of these litigated cases are to be brought up, which occurred before the year 1869, why I don't know that one could estimate the limit of time that may be occupied. When we were last here we obtained the permission of the Committee, and the counsel on the other side did the same, to submit our views. I have prepared my views, but have not been able to print them. I could not see Judge Barnard until Wednesday morning. He was ill in bed on Sunday, Monday, Tuesday, and Wednesday; and I saw him in bed on Wednesday, and I could not submit my views to him before that time. Of course, it is a very delicate subject, and it is a very delicate position for him to be placed in to appear to be objecting to anything. Nevertheless, this point has got to be considered at some time, and has got to be ruled upon. I am prepared to read to the Committee now my views upon this subject.

Mr. PRINCE:

I think it would better if we could get it in printed form, so that when the members of the Committee are all here, as they will be in a short time, that they would be supplied.

Mr. ANDREWS:

Have you any objection to our having it printed, and hand it in to-morrow morning?

Mr. PRINCE:

I think that would be very desirable.

Mr. ANDREWS:

In the meantime, will the Chairman allow us, in case that the Committee should decide that this testimony is not proper, to ask to have it stricken out.

Mr. PRINCE:

Certainly.

Q. When did you first see Mr. Lane on that day? A. A little while before 12 o'clock—a very short time before that.

Q. Where did you see him? A. At my office.

Q. What passed between you? A. I asked Mr. Lane what he came there for. Well, he came there to attend that election. Says I, "You haven't got any stock, have you?" "Well," he said, "I have man-

aged to pick up some," and that was the substance of what took place between us at that time, before the election.

Q. When were you elected an inspector? A. The meeting was called to order shortly after that. Do you want to know what took place that morning?

Q. Yes, sir.

Mr. CURTIS:

How does this affect Judge Barnard? What took place there at that meeting?

Mr. STICKNEY:

We shall show what took place at the meeting, in order to show precisely the circumstances under which a very peculiar order of Mr. Justice Barnard was produced, and you can be very certain that we will not put in anything which we do not deem to be material; and I am very certain that the things which we deem material are material.

Mr. PRINCE:

Do I understand that this election was followed up by some proceedings before Judge Barnard?

Mr. STICKNEY:

It is difficult to say whether it was followed or preceded, matters were so intertwined. It will only be a question that it will take a very few minutes to answer.

Mr. PRINCE:

Go on and state it, and see what it amounts to.

Q. Just state what took place immediately after the meeting began.

A. Well, just before the meeting commenced, the books of the Company were out there, and Mr. Lane and others were having some stock transferred—proposed to transfer one share each to Mr. Lane, Jay Gould, Frederick A. Lane, and James Fisk, Jr., and some fourteen others, I think, or twelve others, I forget which, whether there were fifteen or seventeen proxies.

Q. Do you remember what others now? A. I think one was Mortimer Smith, and Mr. Prentiss, and other men connected with Mr. Lane's office and the Erie Railway—proposed to transfer one share to each of these. That they attempted to do, and they were required to return the old certificate of stock.

Q. Who was attempting to make those transfers? A. Mr. Lane.

Q. Mr. Lane himself? A. Yes, sir.

Q. Was he an officer of the Pier and Warehouse Co. at that time? A. No, sir.

Q. Was he a stockholder at that time? A. No, sir.

Q. Then you demanded a return? A. I requested them to return the old certificate; it was in a certificate of 5,000 shares. That was not done. They did not propose to do that, and Mr. Hamilton W. Robinson had the certificate, and he was transferring the stock with

Mr. Lane. The stock stood in the name of Hamilton W. Robinson, and he was requested then to return the old certificate, 5,000 shares. He did not want to do that, and so he kept that. Then Mr. Lane proposed that Mr. Robinson be the chairman of the meeting, and there was no objection made to him, and he was made chairman of the meeting. This was a meeting of the Directors of the Pier and Warehouse Company.

Q. The meeting of the Directors? A. Of the stockholders.

Q. What purpose? A. For the election of Directors. I was then chosen one of the Inspectors, and Mr. Henry C. Gardiner another, and Mr. Grenzebach.

Q. Let the stenographers get those names? A. Thomas D. Sherwood.

Q. That is yourself? A. Yes, sir.

Q. What is the name of the next? A. Henry C. Gardiner.

Q. And the other one? A. Mr. Augustus N. Grenzebach. We were chosen Inspectors. Then Mr. Lane proposed that we take the ordinary oath that Inspectors are required to take to perform their duty faithfully and honestly; and an oath was drawn up, and a notary sent for, and we signed it and swore to it, and then we proceeded to the election.

Q. On whose motion was it that Inspectors of Election were balloted for? A. That I don't remember.

Q. Do you remember whether or not it was on Mr. Lane's motion? A. That I don't remember.

Q. Go on, then? A. I know that it was at his motion that we were sworn as inspectors.

Q. Did Mr. Lane own, or claim to own, any stock except this one share? A. No, sir; not on the books of the Company; he didn't own any at all.

Q. Did any stock on the books of the Company stand in his name whatever? A. No, sir; excepting, as I say, this sort of transfer that they proposed to make that morning, to make the one share.

Q. Without offering to surrender any old certificate? A. Yes, sir.

Q. Did Mr. Lane state at that time, or at any time, that he ever owned any other stock except that one share? A. No, sir; excepting, as I said before, that he said to me there that he had managed to pick up some stock, but the result showed that he did not have any stock.

Q. He never claimed any shares? A. No, sir; he didn't have any stock.

Q. Will you state what next took place at that election? A. Well, we were requested to take our seats. I know Mr. Lane wanted this election to be very formal—seemed to. He requested us to take our seats at the table, and we did, as Inspectors. He stood opposite to me, and as soon as I declared the polls open he handed me a proxy from Hamilton W. Robinson, and one signed by Mr. Daniel Packer.

Q. This proxy from Hamilton W. Robinson was for how many shares of stock? A. It was 5,000, I guess, less this 15 shares, or 17 shares, or whatever it was; between 4,000 and 5,000 shares.

Q. The proxy from Mr. Packer was for how many shares of stock?
A. For 60,000.

Q. In whose name did that Packer stock stand upon the books of the Company? A. Stood in the name of Daniel Packer, President, in trust for the Company.

Q. Had you ever shown, previous to this time, that entry on the books of the Company to Mr. Lane? A. No, sir; not previous to that time.

Q. Did you then show it to him, or state it to him? A. I did, after he offered his note. He then offered this note; he offered this proxy, accompanied by a note, voting for Directors Jay Gould, Frederick A. Lane and James Fisk, Jr., and others.

Q. Mortimer Smith? A. Mortimer Smith, I think, Nathaniel A. Prentice and Mr. Denman. I don't remember the names of the others, but they were all in that clique, or most of them, at any rate. As soon as he offered me this note I then saw what the trouble was. I could not imagine before what he was there for, nor on what ground. As soon as he offered me this note I looked at it, and I then saw how things stood, and I said to Mr. Lane: "You cannot vote on this treasury stock; you cannot vote on this proxy of Mr. Packer." The other proxy I didn't object to—Mr. Robinson's. Says I, "You can't vote on this stock, of course." Says he, "I guess I can." Says I, "You can't vote on it here at this election," and I passed it back to him. And then there was the gentleman he brought with him, who was sitting at another table in my rear.

Q. What was his name? A. I don't know what his name was. I think it was Mr. Prentiss, or Deuman; I have forgotten—some gentleman from his office—Mr. Lane's own office. He was there apparently taking notes. Mr. Lane called to him, and asked him if he had those papers. Then the first thing, I knew this man came around and handed me an order in a suit in the Supreme Court.

Q. Look at that paper and see if that is the order (handing witness a paper). A. Yes, sir; that is the one. It was accompanied by a summons and complaint sworn to that day.

Mr. STICKNEY:

We will put in the complaint as an exhibit.

Mr. PRINCE:

As the order is brief, I would suggest that the whole of it should be read instead of taking the witness's statement.

Mr. STICKNEY read the order as follows:

"Supreme Court, City and County of N. Y. Frederick A. Lane vs. John Doe and Richard Roe. It appearing to me that sufficient grounds exist for the granting of such order, it is ordered that the defendants herein, Inspectors of Election of the N. Y. Pier and

" Warehouse Co., do receive the proxies of Hamilton W. Robinson
 " and Daniel Packer in trust, according to the terms and tenor thereof.

" GEORGE G. BARNARD,
" Justice Sup Court."

[The signature to the above order is admitted to be in the handwriting of Judge Barnard.]

[The summons and complaint introduced, and marked "Charge 8, B."]

Q. You had never been Inspectors, you and these other two gentlemen, until you were elected there at this very meeting? A. No, sir; we were elected there just about 12 o'clock.

Q. Within how many minutes before this injunction was served on you, were you so elected Inspectors. I call it an injunction; I don't know what kind of an order it is? A. Well, perhaps ten minutes to half an hour.

Q. How many minutes had the polls been open before this paper was served upon you? A. I don't suppose it was five minutes; he offered this note, and I refused it, and he then served me with this paper commanding me to take this note. He was there all the time himself—Mr. Lane was.

Q. Had the gentleman who produced this paper from his pocket, been absent from the room at all? A. Not to my recollection; I think he was not at all.

By Mr. PRINCE:

Q. Whereabouts was this election held? A. 35 Wall street.

Did any one else, as far as you saw, come in with Mr. Lane except this person who produced these papers? A. No, sir; nobody connected with him that I know of.

Q. Was any other paper, except the summons and complaint, served with this order? A. No, sir; I think not.

Q. Had there been before this time, when this order was served, or within a few minutes of that time, any demand on Mr. Lane's part that he should be allowed to vote on this proxy or any refusal on your part to receive his vote? A. No, sir. I did not know anything about it. I was wondering what he was there for, knowing that he had no stock, or supposing that he had not.

Q. Do you know Mr. Hyde? A. Yes, sir.

Q. Was he there with Mr. Lane at this time? A. Yes, sir.

Q. What part did he take in this proceeding? A. Well, when I saw them trying to transfer this stock on the book, I was trying to imagine what they were there for, what they were trying to do, and could not understand it. I thought there must be some trouble brewing and I called Mr. Hyde aside and asked him what it was. He said he didn't know anything at all about it. The object was, if there was any trouble, to try and smooth it over and have the election pro-

ceed. I think that is all that took place between Mr. Hyde and myself that morning previous to the election.

Q. Then will you state what happened after the service of these papers that you have mentioned. Did you receive the Packer vote, or did you refuse to receive it? A. I refused to receive it until I was served, then I consulted with my co-inspector, Mr. Gardiner, and we concluded, and we announced, that we would receive the vote subject to consideration. Of course we saw that we were ordered to receive it and we had to receive it, so we received it subject to consideration, as we announced. The election then proceeded and the polls were closed, I think, at two o'clock.

Q. Did Mr. Lane say anything else that you have not stated? A. I think he moved the polls closed at 2 o'clock, and they were closed accordingly. The election all proceeded just as Mr. Lane wanted it in his vote, the Chairman recognizing his 60,000 shares.

Q. The Chairman? A. Yes, sir, at the time.

Q. Then to what day was the election adjourned—the meeting adjourned? A. Then Mr. Lane moved that the meeting stand adjourned until Monday morning; this was Saturday, I think; this was the 24th of October, 1868. He moved that it stand adjourned until 11 o'clock Monday morning.

Q. Which would be what day of the month? A. The 26th of the month. A part of the resolution was that it stand adjourned to that hour, at which time the Inspectors should make their report. On the 26th, a little before 11 o'clock, Mr. Lane came to the office, and the report was not quite finished at that time. It was almost finished, and Mr. Gardiner and Grenzebach were in my back office; the doors were closed.

By Mr. CURTIS:

Q. Was that the report of the Inspectors? A. Yes, sir, of the Inspectors. We had canvassed this vote, and I looked up the law and was satisfied that that vote was not a proper vote; that he could not vote upon the treasury stock; and we had cast out this vote of 60,000 shares, and declared the result in favor of the other ticket, and opposed to that ticket, but our report was not finished in writing, and Mr. Gardiner was drawing the report in my back office, just before 11 o'clock; had almost finished it, but not quite. Mr. Lane came there just before 11, and Mr. Robinson and Mr. Hyde and the friend who served me these papers, and Mr. Lane asked me if the report was ready. I told him it would be very soon, and proposed to him that he come in at 12 o'clock, and he said no, he was going to make a day of it, and so he proposed to wait. As soon as 11 o'clock arrived, he then moved that the meeting be called to order. The meeting was called to order, and he then asked me if we had the report. I told him it would be there very soon, and wanted him to wait, and told him I thought this thing was a farce, and had gone far enough, and ought not to go any further; wait a few minutes and it would be there. He would not listen to that; he moved that the meeting adjourn to one

or three o'clock, and I think it was three o'clock of that day at which time to make our report. I protested against it, but he put the vote to adjourn, and he voted in favor of it, and it was carried. I voted against it. Then they all rose, and I called Mr. Gardiner in from the back room. He came in. Then Mr. Lane's clerk began to feel in his pocket for some more papers, and I mistrusted he was going to serve some more papers. I told him not to serve any more papers on me; that I had had quite enough, and I thought this thing had been carried quite far enough, but he then served me with another order.

Q. During all this time, was either Mr. Lane or his clerk absent from the room? A. No, sir.

Q. And this was the paper that was then served? A. Yes, sir.

Mr. STICKNEY read the paper, as follows :

"Supreme Court, City and County of New York. Frederick A. Lane v. Thomas D. Sherwood. Henry C. Gardiner, and Augustus N. Grenzebach. It appearing to me that sufficient grounds exist for the granting of such order, I do hereby order that the defendants herein, Inspectors of Election of the New York Pier and Warehouse Company, do forthwith make their report of such election, that they return the vote of Daniel Packer in trust at 60,000 shares, and that they furnish their certificate of election according to the number of votes cast, reckoning the vote of said Daniel Packer in trust at the amount aforesaid, and that they make such certificate before 3 o'clock of this day. GEORGE G. BARNARD, *P. J. S. C.*

"October 26th, 1868."

Q. Was the original of that order shown to you, at that time, with Judge Barnard's signature to it? A. I think it was.

Q. That is your best recollection? A. Yes, sir.

Q. Do you remember what papers were served on you in connection with that order? A. I don't know, sir. I don't recollect whether he sent me a summons at that time or not. I think he served me with a summons, for I know we had those suits pending afterwards.

Mr. STICKNEY :

I may state that we subpoenaed the County Clerk to produce all the papers, and he has left all the papers that there were on file in his office; no other papers appeared on which this order was granted. We shall prove that fact by the County Clerk, but I will state it for your information.

THE WITNESS :

I think there was no affidavit at all, and I am satisfied there was no complaint, because the complaint was served on me on the 29th at my house.

Q. To the best of your recollection, then, was any other paper served on you with that order that you have last mentioned? A. No, sir; unless there was a summons with it.

Q. What next took place? A. Well, we finished our report. We

took counsel in the matter, and at 3 o'clock we had our report finished.

Q. Did you count in those 60,000 shares? A. No, sir; we did not. We finished our report by saying that we had drawn this report down to this stage, down to this point, when we were served with this order, and inserted the order into the report, and then continued to say that inasmuch we were under oath as Inspectors, we did not feel that we could obey the order. At 3 o'clock Mr. Lane and Mr. Hyde and Mr. Robinson and his friend came and the report was read, and Mr. Lane moved that the report be handed over to his friend there, whom he had elected that morning Secretary, the regular Secretary of the stockholders meeting being that morning in the back room with the other Inspectors, and Mr. Lane having, on his motion, elected his friend another Secretary; and he moved then that this report be handed over to him. Mr. Gardiner, after reading the report, said he guessed he would not hand it to him; he would keep it and hand it to the President. So he put it in his pocket.

By Mr. CURTIS:

Q. Gardiner was the gentlemen who read the report? A. Yes, sir; he was one of the Inspectors.

Q. Were you elected Secretary of the Company; if so, when? A. This was on the 26th. I guess it was the next day. I think it was the next day, just after the Board was called together and they elected their officers; elected, Hiram Walbridge, President; Henry C. Gardiner, Vice-President; Geo. Ellis, Cashier of the Bank of the Commonwealth, Treasurer; and myself, Secretary.

Q. That was on the 27th, you think? A. I think it was the 27th.

Q. And did you take possession of the books and papers of the Company then? A. Yes, sir. I had them there then.

By Mr. PRINCE:

Q. Was this the first organization of the Company? A. Oh, no; it is a Company that had been in existence a long time.

Q. Who was the Secretary the year before? A. Charles P. Shaw.

Q. Will you look at the copy of the complaint which was served upon you with the first order, and which is marked Charge 8 B, and state whether there were any names of any defendants inserted in that complaint.

Mr. CURTIS:

Won't that speak for itself.

THE WITNESS:

It speaks for itself. There are none here. I made a minute on it at the time.

Q. None on it when it was served? A. No, sir; there are none now.

Q. What next took place? A. The next that took place was the 29th of October. Mr. Hyde and a Mr. Prentiss, I think it was——

Q. 29th or 28th? A. 29th.

Q. They came to the office? A. They came to the office. They wanted to see the books of the Company. Mr. Hyde, I think, was a stockholder for a small amount, and I knew of course, that he had a right to see the books, and I got them out, or a certain book, and they had them there upon the sofa, between them sometime, talking, and after they got through examining the book—I have forgotten now which book it was, one of the books of the Company—Mr. Prentiss, if he was the man—Denman or Prentiss—Prentiss; he then served me with this order, or endorsed copy, “Received October 29th, 1868, between 11 and 12 o’clock, at 35 Wall street. T. D. S.”

Q. Who is Mr. Prentiss? A. He is a gentleman in Mr. Lane’s office, I believe.

[The affidavit to obtain Receiver and Injunction, marked Charge 8, C.]

[The order dated October 28th, is marked Charge 8, D.]

Mr. STICKNEY :

We produce from the files of the County Clerk’s office, the original undertaking on injunction in the suit of Frederick A. Lane against The New York Pier and Warehouse Company, and others, and wish it noted in the minutes, that the sureties are Jay Gould and Henry N. Smith. We produce also the original bond of the Receiver, Nathaniel A. Prentiss, in this suit, from the files of the County Clerk’s office, and wish it to appear in the minutes, that the sureties on that bond are Jay Gould and Henry N. Smith.

Q. Now will you state what took place there, after Mr. Prentiss served you with this copy of the order appointing him Receiver of the books and papers of the Company? A. He demanded the books; I told him that I wanted to see my counsel; we had counsel in this case; that if I was acting for myself individually, I should know what to do, but inasmuch as I was acting there for the Company too, I wanted to consult my counsel, and they refused to give me any time. I told them I thought that if Judge Barnard was there he would give me time, I was satisfied he would. I wanted to do what was right in the matter, but I did not consider that they had any standing in Court, or any where else to do so. I wanted to avoid all trouble. He intimated to me that I should be guilty of contempt if I disobeyed the order. I told him I did not want to disobey the order.

By Mr. ANDREWS :

Q. Who was this? A. Prentiss. They demanded the books; I thought it all over in my mind at the moment and I saw the trouble I might get in—a fight with Erie fellows, and all that, and thought that I ought not to give them the books, and I wanted to see Mr. Marsh, the counsel. I declined to give them; I told him that perhaps he

might have the books before sundown. They insisted on having them, and I told them they could not have them. They insisted on having an answer right off, and I told them I would not give it then. I consulted with my counsel. They did not call again; I expected they would call again before sundown to get an answer, but they did not.

Q. Did you give an absolute refusal to give the books to them? A. No, sir; not an absolute refusal; I wanted time to see my counsel, and I said to them, I knew if Judge Barnard was there, he would give me a little while to see my counsel; but they refused to let me have any time on that score, but at the same time I took it. They did not return again that night.

Q. Had Mr. Lane ever claimed to own these books or papers? A. Oh, no, sir.

Q. Had he ever claimed to have any interest of any kind in these books or papers, or in any of them? A. No, sir.

Q. Had any one but the Company had any interest of any kind in any of these books or papers? A. No, sir; not that I know of.

Q. And you had them in your possession as Secretary? A. Yes, sir.

Q. Were there any proceedings of any kind taken before a Referee to ascertain what books and papers were in your possession as Secretary, or to have a delivery of those books or papers made to the Receiver? A. Not that I ever remember of. The first I knew of anything was the service of this order upon me.

Q. What was the next proceeding then? A. I heard nothing from these gentlemen until the 30th of October; it was the next day.

Q. What was the next thing? A. The next day, between eleven and twelve o'clock, the Receiver came down again with a gentleman who was a stranger to me, came in, and Mr. Prentiss asked me if I had concluded to give him those books. Well, I thought this gentleman he brought there was brought for a witness, and I better not say anything, so I said to him I had nothing further to say. He then told me I had better give him the books; that Mr. Gould was security, and, if the Court ordered their return, they would be returned in good shape. I told him that I thought a bird in the hand was worth two in a bush, that I had better not do that. Well, he then whispered to me, and said that was a Sheriff, and that he had an order there for my arrest, without bail. I did not believe that, I couldn't believe it, and I told him, if he had, I should like to see it; so then he stepped up, and served me with this order.

Q. And took you into custody under it? A. Yes, sir.

Q. Did he have the original in his hand? A. Well, I suppose he had.

Q. To your best recollection? A. Oh, yes; he had it up at the jail.

Mr. STICKNEY read the order referred to as follows:

"New York Supreme Court, City and County of New York. Frederick A. Lane *vs.* The New York Pier and Warehouse Company,

“ Charles P. Shaw, Thomas D. Sherwood, Henry C. Gardiner and
 “ Augustus N. Grenzebach. It sufficiently appearing to me, by the
 “ annexed copy of an order and the affidavits thereto annexed, that the
 “ said Thomas D. Sherwood has refused to obey the said order, in con-
 “ tempt of this Court, I hereby order and require the Sheriff of the
 “ city and county of New York to forthwith, upon the receipt thereof,
 “ arrest and hold the body of the said Thomas D. Sherwood without
 “ bail, and him safely keep and have, and produce before me, one of
 “ the Justices of this Court, at Chambers thereof, at the City Hall, in
 “ the city of New York, on the 31st day of October, 1868, at 10 o'clock
 “ of the forenoon of the said day, to show cause why he should not be
 “ punished as for a contempt of this Court.

“ GEORGE G. BARNARD, *P. J. S. C.*

“ October 30th, 1868.”

Q. Were those the papers which were served upon you with the order? (Handing witness some papers.) A. Yes, sir.

The papers referred to are marked Charge 8 E, being the affidavit of Nathaniel A. Prentiss and J. Burroughs Hyde, in the suit of Frederick A. Lane *vs.* The New York Pier and Warehouse Company.

Q. Were there any other papers upon which were procured any of these orders, in relation to which you have testified, other than the papers which you have mentioned in your testimony, as far as you know? A. No, sir.

Q. Were any others ever served upon you? A. Upon which these orders were got? No, sir. There was a complaint served upon me after the suit was commenced at the house.

Q. What took place after you were in the hands of the Sheriff?

Mr. ANDREWS:

What has the Judge to do with that?

Mr. STICKNEY:

He has a great deal to do with it, as we will show. We hold that there is some responsibility for what happens in actions of this sort.

Q. Go on and state what took place? A. I went with the Deputy Sheriff to Mr. Marsh's office, and saw him a moment, and then I went to the Sheriff's office, and remained there about three-quarters of an hour, and wrote some letters to my friends, telling them where I was, or where I was going to be, and I asked the Sheriff what he was going to do with me. I mistrusted that he was not going to take me any further—didn't dare to take me any further—but he said, “Well, I didn't suppose you was in any hurry about going up.” I told him, inasmuch as I was deprived of my liberty, as my friends would be up to the jail to see me, and would not come here, I might as well be in one place as another; so he said he would send me up. I went up there, and I arrived there just about one o'clock. Now, do you want to know what took place while I was there?

Q. Yes. A. I was misused most shamefully there.

Counsel for Judge Barnard objected to witness stating his treatment while in custody.

THE WITNESS :

Anybody can take judicial notice of how I was treated, without any testimony.

Mr. PRINCE :

I don't think it is material.

Mr. STICKNEY :

We shall show what we conceive to have been one of the points intended to be accomplished by this last order.

Mr. PRINCE :

If you can show, which I think you ought to have shown at first, that there was any intention—if this gentleman was treated in any unusual way—

Mr. STICKNEY :

I don't mean anything of that sort, not anything of the nature of cruel or harsh treatment, but we intend to show this, that this gentleman was not brought up at Court at that time, and that in fact he was kept away from the Court even, at that time, intentionally.

Mr. PRINCE :

Of course, as to what occurred at the time of the return; that is all perfectly proper. I didn't understand he was going on to state that.

Q. Just confine yourself to what took place the next morning, at or about the time of 10 o'clock, the return hour of the order? A. Do you mean as to what took place at the jail, or the Court House?

Q. At the jail. A. I waited for five minutes of 10. I knew this order commanded them to produce me in Court at 10 o'clock. I was of course anxious to get before the Judge, and I waited there until five minutes of 10, and I told the jailor that the order upon which he held me there required him to produce me in Court at 10 o'clock. Says I, "It is now five minutes of 10." Says he, "That clock is not right." Says I, "It is right, and you told me it was right last night, and it corresponds with my watch exactly." And he began to look over the papers very quietly as if he had all day before him, and I was very anxious of course, and I looked over his paper, and I knew this writ the moment I saw it, upon which he held me, and he would come across a writ and open it, and look at it, and read it over, and put it back. Finally, I said to him, when he took up another writ, "That is not my paper;" he looked at me and said, "I guess I understand my business." I said nothing more until he got hold of this writ. He read it through, and says he, "I didn't know that this was this way;" says I, "It is your business to know it, keeping an innocent

man here from Court, locked up." He put the papers back and locked up the desk, and went out and did not return until about ten minutes past 10 o'clock. I was getting rather warm, and when he came in, I demanded to be discharged forthwith. Well, he told me to mind my own business, he knew his. I told him I knew mine; that order had spent its force at 10 o'clock, and I demanded to be discharged; and he asked me if I thought that I run that machine. I told him I thought I did since 10 o'clock, so far as I was concerned; and he then told me to shut up; that is the words that he used—"shut up." He was in his shirt sleeves, and he started to come towards me with a big bunch of keys in his hand, and I walked towards him and met him half-way, and he shook these keys in my face and told me to shut up, or he would send me up stairs—would lock me up; so I thought I had better shut up, as I knew he had me in his power. I said nothing more, and he took me down to court after a while. I got down there about half-past 10. This time my case had been partially heard, in fact they had got almost through with it. At that time Mr. Lane was addressing the Court, at the time I went in, and was saying so far as the contempt was concerned there was no question about that.

Q. This was an order entered by Judge Barnard? A. Yes, sir. The case was heard, and I was discharged a short time after I arrived in Court.

Q. And that is the order that was granted by Judge Barnard, is it not? (Showing witness a document.) A. Yes, sir.

MR. STICKNEY:

We put in evidence now the affidavit of Henry C. Gardner, and the order dated 31st October, 1868, in the same suit, *Lane vs. The New York Pier and Warehouse Company*, produced from the files of the County Clerk's office; the signature of the order being admitted to be in Judge Barnard's handwriting. (Marked Charge 8, F.)

By Mr. CURTIS:

Q. When the first order was served upon you, directing you, as an Inspector, to include the 60,000 shares on which these parties offered to vote, did you make any application to Judge Barnard to modify or rescind that order? A. Do you mean afterwards? I was sitting as an Inspector at the time.

Q. No application was made at any time to modify or rescind that order?

A. No, sir, not that I know of—on that order or the second order.

Q. I will come to that presently. I speak of this first one directing those votes to be received; no application was made to him at any time to change or rescind that? A. Not that I know of, on that order; but on the next order I went to the Court to find the Judge, and see about that thing, but I could not find him, therefore I made no application.

Q. When this first order was served the election went on? A. Yes, sir.

Q. And you excluded the 60,000 shares? A. No, sir; we did not exclude them; we received the votes, as I have said, at the time. Under this order we had to receive them, but we received them subject to consideration. We took the vote.

Q. Then you received them in a qualified manner? Yes, sir.

Q. You did not receive it and count it, but you received it for consideration? A. Yes, sir.

Q. Then when the next order came directing you to include the 60,000 shares in the count—in the Report, and the result of the election, did you make any application to Judge Barnard to modify or rescind that order? A. No, sir, we did not. I say upon one of these orders I went to the Court to see the Judge to make an application to him, but I could not find him. We did not get there in time.

Q. When the third order appointing the Receiver, and directing that the books of the Company be handed over to him, was served on you, or after it was served on you, did you make any application to him to rescind or modify that order? (No answer.)

By Mr. ANDREWS:

Q. Have you that affidavit that you made in the case? A. I remember one that was made in jail, but when I got to Court the case was all through.

Q. Have you got that affidavit? A. No, sir.

Mr. STICKNEY:

That was not presented to the Court.

Q. Did you make an affidavit? A. I never made any.

Q. You drew one? A. Yes, sir.

Mr. ANDREWS:

I ask you to produce it.

Mr. PRINCE:

It was never presented to the Court.

Mr. ANDREWS:

No matter; it helps to explain the case.

The WITNESS:

Mr. Gardiner had drawn the affidavit and brought it to the jail. I took it that night and made some additions to it. Here is the paper (producing it); I have no objection to putting it in. I made an apology to the Judge that morning. I told the Court that I was placed in a very difficult position, that I was under oath as Inspector of Election and I received this order; that it was issued at the instance of men who had no interest in the Company whatever; who did not own a share of stock—Mr. Lane only claimed to own one share and he did not own that—therefore I did not feel that I could obey the order, but I did not feel like disobeying the order of the Court in this case, but I could not obey it, situated as I was. That was my explanation to his Honor, at the time.

Mr. STICKNEY :

We put in evidence a complete record of the two copies of the summons and complaint. One in the suit of Lane against Sherwood and others, and the other in the suit of Lane against the Pier and Warehouse Co. and others. The originals do not appear in the County Clerk's office.

[The papers in the case of Lane against Sherwood and others, are marked Charge 8 G, and in Lane against The Pier and Warehousing Co. is marked Charge 8 H].

Mr. STICKNEY :

This summons and complaint, in Lane against Sherwood and others, marked Charge 8 G, was served upon you when? A. October 29th, at a quarter past six, at my house.

Q. And the summons and complaint in the case of Lane against The Pier and Warehousing Company, marked Charge 8 H, was served on you when? A. At the same time; they were both served together.

By Mr. VAN COTT :

Q. And the place? A. At the same time and place.

AMASA A. REDFIELD, a witness, being duly sworn, testifies :

By Mr. STICKNEY :

Q. Did you have any connection personally, with the Albany and Susquehanna railroad litigation? A. I did.

Q. When did your connection with it begin? A. Early in August, 1869.

Q. Do you remember the order appointing Mr. Fisk and Mr. Courter Receivers, being granted? A. I remember it very well.

Q. Will you state to the Committee what you know of the circumstances, and what took place at the time of the granting of that order? A. I know that a majority of the Board of Directors of the road came down from Albany to this city and employed counsel, who advised the application of a Receiver, and that the firm with which I was then connected was retained by those Directors to appear on behalf of the Albany and Susquehanna Railroad Company and those Directors. I know that an application was made to Judge Barnard and was granted, but when and where, I don't know.

Q. Were you present with Mr. Shearman at the time he drew the order and the other papers for the Receivership? A. I was there and I drafted the bill myself.

Q. Drafted what? A. Either the complaint or the order, myself.

Q. You were counsel for whom? A. I was counsel for the Albany and Susquehanna Railroad Company.

Q. The Albany and Susquehanna Railroad Company were defendants, were they not? A. Very true.

Q. Do you mean to say, being counsel for the Company, defendant, you drafted a complaint for the plaintiff? A. Yes, sir, and I very willingly consented to the order to appoint a Receiver for the best interests of the road.

Q. You have said that a majority of the Directors came to New York and wished a Receiver appointed? A. Yes, sir.

Q. Do you know how many Directors there were in the Board? A. There were thirteen.

Q. Do you remember whether there were not fourteen? A. Including Mr. Ramsey, there were fourteen.

Q. And a majority of that number would be how many? A. Eight.

Q. Were there eight present there on that evening? A. There were not eight present.

Q. Did eight Directors consent to your firm acting for the Railroad Company in the month of August? A. Yes, sir.

Q. Who were the eight—during the month of August I mean? A. We were retained on the 10th of August formally by J. R. Herrick, Vice President of the Company.

Q. I will alter my question if you please. At the time—

Mr. PRINCE:

You may as well have the information; it will have to come out some time.

THE WITNESS:

Also Mr. Jacob Leonard, Mr. Charles Courter, Mr. David Wilbur, Mr. Alonzo Evarts and by one gentleman whose name I don't recall.

Q. That makes how many? A. That makes seven, I believe.

Q. Can you name any other? A. Not of those who were Directors of the Company in August.

Q. Then you were not appointed Counsel for the Company by a majority of the Directors in the month of August? A. By the Vice-President—

Q. Will you answer my question, please?

Mr. ANDREWS:

Are you cross-examining the witness? I thought he was your own.

Mr. STICKNEY:

I am asking questions.

THE WITNESS:

My impression is there were thirteen Directors; I may be mistaken in saying that there was a majority. There were at least seven.

Q. Will you refer to the complaint in this suit—in the Chase suit—which you say you drafted, and see if it does recite that there were fourteen Directors? (Producing the complaint to the witness.) A. Yes, sir.

Q. At this time you were not appointed by a majority of the Board of Directors, the counsel of this Railroad Company? A. Only by seven of the Directors.

Q. That is not a majority of fourteen.

Mr. PRINCE :

That is a matter of computation.

Mr. STICKNEY :

The witness stated that he was appointed by a majority.

Mr. ANDREWS :

I guess you will find that there were eight.

Q. Have you named eight? A. I have only named seven.

Q. You have only named six. After these papers for the Receivership were drawn, did Mr. Shearman give them to Mr. Sterling? A. I think he did.

Q. Do you remember what he told him? A. I do not.

Q. Did you see Mr. Fisk there in the Treasurer's rooms in the Opera House when Mr. Shearman gave Mr. Sterling these papers? A. I don't remember; he was in and out during the evening.

Q. Do you remember Mr. Fisk's telling Mr. Sterling where Judge Barnard was to be found? A. I do not.

Q. Do you remember where Mr. Fisk said Judge Barnard was to be found? A. I do not.

Q. You intended to have the Receivers leave for Albany that night on the eleven o'clock train? A. That was the idea.

Q. The papers for the Receivers were not finished until some time after ten o'clock? A. That is my recollection—yes, sir.

Q. Now, by what Judge did you expect to get the papers signed between the hour of 10 and the hour of 10.45 that night? A. I do not remember that any conversation was had as to what Judge should grant the order, or where he was, or how he was to be had; I was simply called in to help draft the complaint and the necessary papers on which to make the application.

Q. Being counsel for the defendant? A. Being counsel for these Directors, and by them employed for the Railroad Company.

Q. But you did expect that the Receivers would start for Albany on the eleven o'clock train?

Mr. PRINCE :

He has stated that that was the idea.

Q. How did you expect to get the order signed in so short a time? A. I didn't think it at all singular to apply to a Judge within a half an hour, under these circumstances.

Q. What Judge did you expect to find? A. I didn't expect to find any.

Q. Judge Barnard was found, was he not? A. I only know that he was found by the fact that his name was at the end of the paper.

Q. Do you mean to say that nothing was said in that room between nine and ten, or between nine and half-past ten o'clock, with reference to having that paper signed by Judge Barnard? A. I have no recollection of anything having been said of the kind. If it had been said I could not possibly have heard it, because I was engaged in a corner of the room drafting these papers.

Q. Do you know, or did you hear, that Judge Barnard had been in Poughkeepsie that day? A. I did not at that time.

Q. Did you know or did you hear that a telegram had been sent for him by Mr. Fisk? A. I did not.

Q. Or by James H. Coleman? A. I know nothing of any telegram, or of the whereabouts of any Judge, or of any particular Judge, to whom the application was to be made, or anything of the sort.

Q. Did you see Mr. Sterling after he came back with that order signed? A. I think I did.

Q. How long had he been absent? A. I should say twenty minutes; I have no distinct recollection of the time.

Q. Did you see Mr. Fisk when he went out with Mr. Sterling? A. I did not.

Q. Did you see Mr. Fisk when he came back with Mr. Sterling? A. I did not.

[Objected to, as assuming what had not been proven.]

Mr. STICKNEY :

Mr. Shearman swore positively that Mr. Fisk did go with Mr. Sterling.

Mr. ANDREWS :

Mr. Sterling went out alone.

Mr. PRINCE :

He went out once alone and once he met him; I don't see why we can't give the recollection of the witness on it.

Mr. STICKNEY :

Mr. Shearman swore positively that Mr. Fisk went out with Mr. Sterling.

Mr. ANDREWS :

There is no such testimony. The gentleman's recollection is entirely at fault.

Q. Was Mr. Gould there that evening? A. I don't remember having seen him there.

Q. Where did Mr. Sterling say that he had seen Judge Barnard? A. He didn't say there was considerable confusion; I remember, at the time, I was on the point of leaving for home, and paid very little attention until my duties in drafting the papers were finished and I was through for the night.

Q. Was Mr. Fowler there? A. I don't know any such man.

Q. You don't know who he is? A. No, sir.

Q. Do you know Mr. John F. Cole? A. I do not.

Q. Who was there beside the directors of the Albany and Susquehanna Railroad Co., that you have mentioned? A. I remember no one but Mr. Fisk, who was in and out considerably during the evening; Mr. Sterling, Mr. Shearman, myself and one or two of Field & Shearman's clerks.

Q. Was Mr. Whittaker there—one of Field & Shearman's clerks? A. I think not; I don't know.

Q. Mr. Malloy? A. I don't know; I think Mr. Schomp was there and Mr. Ensign, though I am not by any means sure.

Q. These are all the parties you remember? A. These are all that I now remember.

Q. Do you remember whether Mr. Fisk was in the habit of calling at No. 359 West Twenty-third Street? A. I do not know.

Q. Was there any place near the Opera House where Mr. Fisk was in the habit of calling, that you know of or that you were informed of? A. No, sir; I never have known anything whatever of Mr. Fisk's habits in that regard.

Q. We don't inquire as to his habits? A. Or his customary haunts.

By Mr. CURTIS:

Q. You are of the firm of Barrett & Redfield? A. Yes, sir.

Q. Of that firm, was Judge Barrett, now of the Supreme Court, a member? A. He became a member I think of the firm in October, 1869.

Q. He was in your firm when he was chosen to his present position, was he not? A. Yes, sir.

Q. Who were the members of the firm at the time of these proceedings—at the time this order was obtained, in August, 1869? A. Mr. William C. Barrett, myself and James G. Brinsmade.

Q. William C. Barrett is the uncle of the Judge? A. Yes, sir.

Q. Did you see the directors of the Albany and Susquehanna Railroad Company sign the consent to the making of that order. A. Yes, sir.

Q. Please look at this paper and state whether that is the consent which you saw them sign? (Producing a paper to the witness.) A. To the best of my recollection it is, being in Mr. Shearman's handwriting.

Q. Was Mr. Herrick, the vice-president, there? A. Yes, sir.

Q. Did he sign the consent? A. On behalf of the Albany and Susquehanna Railroad Company.

Q. Look at the signatures and see how many of them you identify as being present? A. I am quite confident that all the gentlemen whose names are to this paper were then present.

Q. That paper shows eight, does it not? A. Only seven. Mr. Herrick's name is signed individually and as vice-president. Counting him one makes seven.

Q. Was not Mr. Ramsey, the president, then under an order of sus-

pension of his functions as director and president? A. I so understand it.

Q. You understood it at that time? A. Yes, sir.

Q. Do you know of any conspiracy or combination or concert between Judge Barnard and anybody connected with or promoting that proceeding, either as party or counsel or friend, in the proceeding to procure that road corruptly and improperly to be placed in the hands of Receivers? A. As to every one but ourselves, I have no knowledge; as to ourselves I have knowledge that no such conspiracy ever existed.

Q. Do you know of any fact whatever that would have a tendency to show that any one other than yourselves was a party to such a proceeding with Judge Barnard? A. I have reason to believe that there was no such conspiracy as that, founded on the justice of this complaint and upon my high opinion of the character of Mr. Thomas. G. Shearman, who was the active attorney in the entire litigation.

By Mr. STICKNEY:

Q. Had you any authority from these directors that you have mentioned except a verbal authority? A. Yes, sir.

Q. Have you your written authority with you. A. I have not.

Q. It was not given at this time? A. It was given about the 10th of August.

Q. Will you send a copy of that paper to the Committee? A. I will try to find it.

Q. You have stated that at the time this receivership was granted, Mr. Ramsay, the president, was suspended from his office; by whom had he been suspended? A. I was informed by Mr. Herrick, the vice-president, on the evening we have spoken of, that Mr. Ramsay had been suspended, and the directors who were present constituted a majority of the members of the board who were capable of acting. That is all the knowledge I then had on the subject.

Q. Did you not know by whom Mr. Ramsay had been suspended? Had you not been informed? A. I don't think I had been.

Q. Did you assist Mr. Shearman in drawing all the papers? A. Not all of the papers.

Q. Do you remember whether you read over the papers which were presented? A. I do not—if you have got the original order—

Q. I mean the affidavit which was presented on which the order for the receivership was granted. A. I cannot say that I remember reading the affidavit; it is possible that it is in my handwriting. If you have the original, I can tell.

Q. Did you know that at the time Mr. Herrick assumed to give this consent to the appointment of a Receiver on the part of the railroad company, he also had been suspended from his office? A. I did not.

Q. Did you know that Mr. Wilbur, another of the directors who gave his consent to the order for the receivership, had also been suspended from his office? A. I remember the general fact that each party attempted to suspend the other, but how far their sus-

pensions went I do not know. That was one of the points upon which the receivership was asked. There was a general conflict, and it was sufficient for my purpose that certain directors were willing to put the road into the hands of a Receiver.

Q. Will you answer my question, if you please. Did you know that Mr. Wilbur, another of the directors who gave his consent to the order of receivership, had also been suspended from his office? A. I could not answer that any more distinctly than I have already done.

Q. Did you know that Mr. Leonard had been suspended from his office as a director, he being another party who signed this consent?

A. I repeat my answer as before, that I knew there were a great number of suspensions or attempted suspensions from the directorship and that left the company substantially without any direction.

Q. Did you know that Mr. North, also another director who signed this consent, had been suspended from his office? A. No, sir.

Q. Do you remember whether or not it appeared by the affidavit which was submitted to Judge Barnard that these four directors who purported to sign this consent for the receivership had already been suspended from their office by an order of the Court? A. I don't remember the contents of the affidavit.

Q. You say you know of no concert between Judge Barnard and other parties concerning this litigation. Do you know anything of the circumstances under which Judge Barnard came from Poughkeepsie on the night on which he signed this order? A. I know nothing whatever of the circumstances.

Q. You cannot form any opinion whether there was a concert with Mr. Fisk and others, is that the fact? A. I have nothing on which to base an opinion except that which I have given.

Q. By that you mean your confidence in the character of Mr. Shearman? A. That, in addition to the facts of the case which, in my opinion, warranted the granting of the order, the injunction and appointing Receivers.

Q. I ask as to the circumstances showing any concert between Judge Barnard and Mr. Fisk or others? A. I know of no such concert.

JOHN F. COLE, A witness, being duly sworn, testifies:

By MR. STICKNEY:

Q. Were you in August, 1869, the lessee of the Grand Opera House? A. No sir.

Q. When did you become so? A. The 4th of September, 1871.

Q. What was your business or occupation in August, 1869? A. I managed the Grand Opera House for Mr. Fisk.

Q. Where was your residence at that time? A. At what date?

Q. August, 1869? A. In East Tenth Street, No. 135.

Q. Did you have a residence or house two doors west of the Opera House at that time? A. No, sir.

Q. Did you have one anywhere in that block? A. No, sir.

Q. Was there not a house within a few doors west of the Grand Opera House at which you were in the habit of visiting? A. Not at that time.

Q. Do you remember the night when Mr. Fisk and Mr. Courter were appointed Receivers of the Albany and Susquehanna Railway Co.? A. No, sir.

Q. Do you remember seeing Mr. Fisk or Mr. Gould, on the evening of the appointment of Mr. Fisk as Receiver of the Albany and Susquehanna Railway Co.? A. No sir.

Q. Do you remember seeing Mr. Fisk any night during the month of August, 1869? A. I saw him in the Opera House almost every night.

Q. Anywhere else? A. No, sir.

Q. Do you know Mr. John W. Sterling, of the firm of Field & Shearman? A. Yes, sir.

Q. Do you remember seeing him on any evening in August, 1869? A. No, sir.

Q. Either in the Opera House or any house near there? A. No, sir. I do not recollect of seeing him. I might have seen him in the Opera House.

Q. Or in any house in that block except the Opera House? A. No, sir.

Q. Have you or had you before the month of August, 1869, been in the habit of seeing Judge Barnard anywhere? A. No, sir; except at the office. I may have seen him there.

Q. At the Erie office? A. I might have seen him at the Opera House.

Q. Have you any recollection whether you had seen him prior to that time? A. I have seen him a great many times, but I do not recollect where or when I have seen him.

Q. Can you remember seeing him anywhere except at the Opera House? A. Yes, sir; I have seen him in the street.

Q. In any other house or building? A. No, sir.

Q. You may have seen him possibly in the Court House. A. Yes, sir; I have seen him in the Court House.

Q. Other than there, and at the Opera House, do you remember seeing him in any other house? A. No, sir.

Q. Did you have any interest of any kind in any house in the block—the same block with the Opera House on Twenty-third Street? A. Any interest at that time?

Q. Yes, sir; at that time? A. No, sir.

Q. Did you have anything to do with the management of it? A. Yes, sir.

Q. What house? A. I had the renting of all the houses.

Q. Of all the houses in that block? A. Yes, sir.

Q. What was the number of the house two doors west of the Opera House? A. No. 313.

Q. That house was occupied by whom? A. The house was vacant.

Q. By whom was it occupied occasionally? A. The house was vacated the first of May.

Q. 1869? A. Yes, sir.

Q. By whom had it been occupied up to that time? A. I have forgotten the name; it was rented.

Q. Have you forgotten? A. I have forgotten the name.

Q. No. 313 I refer to? A. Yes, sir, No. 313; it was vacated by the tenant the first of May.

Q. Are you sure you have no recollection on that point? A. Yes, sir.

Q. Did not James Fisk, Jr., at one time, occupy that house himself? A. Yes, sir.

Q. He did, how late? A. He occupied it at the time of his death.

Q. From what time up to the time of his death? A. I do not recollect what time.

Q. Did he occupy it in August, 1869? A. Not that I know of.

Q. August, 1869? A. Not that I know of.

Q. Did any one else occupy it then? A. Not that I know of.

Q. Are you sure that you have no recollection on that point? A. Yes, sir.

Q. Do you remember whether or not Mr. Fisk's name did not appear in the New York Directory of that year as residing at 313 West Twenty-third Street? A. I do not know whether it did or not; I have no recollection.

Q. You cannot testify that Mr. Fisk did not occupy that house No. 313 during the month of August, 1869? A. No, sir.

Q. You say you collected the rents of all that block? A. Yes, sir.

Q. You kept an account of the rents you collected? A. Yes, sir.

Q. And you have that account still in your possession? A. Yes, sir.

MR. STICKNEY:

We will now serve this witness, if the Chairman pleases, with a notice to produce forthwith the account of the rents collected.

MR. PRINCE:

Perhaps the gentleman will produce them without that trouble.

MR. CURTIS:

We shall submit to the judgment of the committee whether he should be obliged to bring his accounts.

THE WITNESS:

I can say that the last rent I collected was up to May 1st, 1869.

By MR. PRINCE:

Q. Do you know who owns the houses in that block? A. Yes, sir.

Q. Who owns the house No. 313? A. They were owned by Mr. Gould and Mr. Fisk.

Q. The same owners own the whole block? A. Yes, sir; the whole block.

Q. And you rented the houses for them? A. I rented them for them.

Q. Then when any house in that block was not rented to any other party Mr. Gould and Mr. Fisk had control of the house? A. It has quite often occurred that houses have been empty.

Q. I don't think that that answers my question. When any house in that block was not rented to any other parties, Mr. Gould and Mr. Fisk would have control of the house or the entrance to it? A. No, sir: I think I had control of them myself.

By Mr. STICKNEY:

Q. You had control for Mr. Fisk and Mr. Gould? A. Yes, sir.

Q. You did collect the rent up to the first of May, 1869? A. Yes, sir.

Q. Did you ever collect any rents after that? A. No, sir.

By Mr. PRINCE:

Q. Was the house ever occupied after that time? A. Yes, sir; I have occupied it myself.

Q. From what time, to what time? A. I think I moved into the house the last of September or the first of October, 1869.

By Mr. STICKNEY:

Q. Between May, 1869, and September, 1869, when you took possession of the house—when you occupied it yourself who had the key or the keys? A. The keys were in my hands. The keys were delivered to me the 1st of May.

Q. To you? A. They remained in the office.

Q. To you? A. Yes, sir, to me.

Q. In what office? A. They were delivered to me in the old Erie building.

Q. You said they remained in the office; what office? A. In the office in the old Erie building. I had an office there.

Q. Your office? A. Yes, sir.

Q. Can you state that they remained there all the time? A. No, I put mechanics in there to fix the house up. I think I held the keys until we moved up from the old Erie building to the Grand Opera House.

Q. When was that? A. I do not recollect the date but I think it was the last of August.

By Mr. ANDREWS:

Q. 1868 or 1869?

By Mr. STICKNEY:

Q. Do you mean when the railway offices were moved up or when

the Opera House was opened? A. When the railway offices were moved up.

Q. When were the preparations made to move up the railway offices from the down-town place? A. As far as I can recollect, the middle or last of August. I am not positive, however.

Q. Was there furniture in this house between the 1st of May to the time you took possession of it yourself? A. There was furniture in that house when I took possession.

Q. Was there any furniture after it was given up the 1st of May? A. No, sir.

Q. When was the furniture put in? A. My furniture was put in—

Q. I did not ask you that. You say there was furniture there when you moved into the house? A. Yes, sir.

Q. When was that put in? A. I do not know.

Q. Can't you tell at all? A. I do not think I can.

Q. You had the keys of the house in your possession? A. I had the keys in my possession until we moved up.

By Mr. PRINCE:

Q. Was the house furnished during the month of August? A. No, sir; it was not.

Q. Was there any furniture in it in the month of August? A. There might have been the last of August. I am not positive about dates.

Q. Are you positive? A. I am not positive about dates.

Q. Are you positive that there was not any furniture there the first part of the month of August? A. I am positive there was no furniture there when we moved up the Erie offices.

Q. Where was the key kept during the whole portion of the summer? A. Before August I used to let the mechanics have the keys and after it.

Q. Did Mr. Fisk have them? A. No, sir; he never had them at that time.

Q. Are you sure? A. Yes, sir.

Q. He could have taken them any time he chose from your office? A. Not without my knowing it.

Q. You had clerks in the office, had you not? A. No, sir; I had none.

Q. No one in your office at all? A. No, sir.

Q. Was there a passage way or any way of communication between that house and the Opera House, without going on the sidewalk? A. There is now.

Q. Was there then? A. No, sir.

Q. Can you testify positively on that point? A. I cannot testify positively as to the date that passage was put in.

Q. Did you have that passage way built there or put there? A. The passage way was put there by the mechanic having charge at that time.

Mr. GOODRICH:

Q. By whose direction? A. By direction of Mr. Fisk.

Q. You paid the bills for it? A. Yes, sir.

Q. When was your office down town? A. I moved my office up town when the Erie office was moved up town.

Q. When was it that you moved into the office up town? A. I think between the middle and last of August.

Q. And the keys were kept up town, were they not, during the early part of the summer of 1869, for the mechanics were up there continually? A. Mr. Goodrich, the mechanic in charge, had the keys when he was doing the repairs.

Q. Was he the mechanic at the Opera House? A. Yes, sir.

Q. And of the Erie Railway Company? A. Yes, sir.

Q. Can you state positively that the repairs were then going on, on the 6th of August? A. I cannot state positively that the repairs were not completed when we moved up, whatever the date was. I say I do not recollect.

Q. Can you state they were begun the 6th of August? A. The repairing, you mean?

Q. Yes? A. I do not recollect whether they were or not.

Q. Do you know a man by the name of Fowler? A. Yes, sir.

Q. Who is he? A. His name is George B. Fowler, I think.

Q. Where does he live? A. I do not know where he lives now.

Q. What does he do? A. I think he is in the oil business.

Q. Where is his place of business? A. I think it is Brooklyn.

Q. Do you know where in Brooklyn? A. No, sir.

Q. When did you last see him? A. I have seen him within two weeks. I do not recollect the date.

Q. At the Erie office? A. Yes, sir.

Q. How is he engaged in the oil business—in what company? A. I do not know the name of the company.

Q. Have you no recollection? A. No, sir.

Q. Is it a company that supplies oil to the Erie Railway Company? A. I do not know anything about their business.

Q. Is he connected with the Sterling Oil Works? A. I do not know, sir.

Q. What oil works was Mr. Stokes connected with? A. I do not know, sir.

Q. Do you know what Mr. Fowler's occupation was in August, 1869? A. No, sir; I do not know.

Q. How long have you known him? A. I have known him for three or four years.

Q. Where did you first see him—at the Erie office? A. At the Erie office.

Q. Did you use to see him often there. A. I used to see him occasionally.

Q. Had he any personal connection with the Erie Railway Company? A. Not to my knowledge.

Q. Do you know how he happened to be there often? A. No, sir.

Q. Was he not a friend of Mr. Fisk's? A. I believe he was.

Q. Did you ever see anybody else in the Erie Railway office? A. I have seen him at the Opera House.

Q. At any other places? A. I may have seen him in a good many places.

Q. Do you remember any other place you have seen him? A. I presume I have seen him at No. 313.

Q. At what time? A. After we moved up.

Q. Before, at any time? A. Not before.

Q. Are you sure about that? A. After we moved up from the old Erie office.

Q. Are you sure of that? A. Yes, sir.

Q. Have you seen him there at No. 313 with Mr. Fisk? A. Yes, sir.

Q. And at the Opera House, in company with Mr. Fisk? A. I have seen him there; I do not know whether he was there in company with Mr. Fisk or not.

Q. Since you occupied No. 313 Fisk had apartments there? A. Yes, sir.

Q. Did he not have apartments fitted up there before you moved into the Opera House? A. When we moved up from the old Erie office they were in the course of being fitted up.

Q. Were they not fitted up before you took possession of the house—before you occupied it? A. Yes, sir.

Q. Where were they—what part of the house? A. That I occupied.

Q. That Mr. Fisk occupied? A. The lower floor—the first floor.

Q. The rear parlor? A. The two parlors.

Q. Including the rear parlor? A. Yes, sir.

Q. You have had the rent of the entire block to collect? A. Not the entire block, but all the property owned by Mr. Fisk and Mr. Gould, in the block—the entire row.

Q. They did not own No. 359? A. No, sir.

Q. Do you know who did? A. No, sir; I do not know; I know nothing about that house; I have heard of it; it did not come under my supervision.

Q. Did you have anything to do with the purchase of it? A. No, sir.

Q. Who did that? A. I do not know who did that, only from what I have heard; I do not know who lived there then; I know who has lived there since.

Q. Who? A. Miss Mansfield, I suppose.

Q. Do you remember when she first lived there? A. No, sir; I do not.

Q. Are you sure she did not live there in August, 1869? A. I do not know whether she did or not.

Q. Do you know whether Mr. Fisk used to visit there frequently or not? A. Not to my knowledge.

Q. Have you any information on that point? A. No, sir.

Q. Were you in the house yourself? A. I have been there.

Q. Have you seen Mr. Fisk there? A. Yes, sir.

Q. How do you know that he visited there? A. I have seen him there.

Mr. ANDREWS:

What has that to do with this case?

Mr. PRINCE:

I do not know.

Mr. ANDREWS:

If it is the desire of the gentlemen to bring in a lot of scandal outside of the case, I have no objection.

By Mr. CURTIS:

Q. When Mr. Fisk took possession of these lower rooms they were fully furnished; were they not? A. Yes, sir.

Q. Quite handsomely furnished? A. Comfortably furnished.

Q. Was it a pair of rooms with folding doors between, like these which we are in? A. Yes, sir.

Q. About the size of these? A. There was not a great difference in the size.

Q. Gas chandeliers in both of them? A. Yes, sir.

Q. Were those gas chandeliers in the house at the time the tenant left, in May, 1869? A. No, sir.

Q. When were they put in? A. They were put in after we moved from the old Erie offices.

Q. Were there carpets on the floor—the part which Mr. Fisk had? A. After he took possession there were.

Q. Do you know what use was made of these rooms by any one in the summer of 1869, before you moved up from the Erie office?

A. They were not used at all, the keys were in the possession of the mechanics and in my possession.

Q. The rooms were not leased? A. No, sir.

Q. Did you go into them occasionally? A. Yes, sir.

Q. Do you recollect seeing a table and some chairs in the back parlor? A. No, sir.

Q. You don't recollect that? A. No, sir.

Q. Was this building a two story building? A. Yes, sir.

Q. How high is the stoop? A. The stoop must be five or six feet high.

Q. Not so high as what is called a high stoop house, was it? A. I should say not.

Q. What is the number of the house next to the Opera House? A. No. 311.

Q. Is that a house of the same character? A. Precisely the same.

Q. What was the situation of that house in the summer of 1869? A. It was occupied.

Q. How? A. By a family.

Q. Having a lease? A. Yes, sir.

By Mr. PRINCE:

Q. The house next beyond, No. 315—How was that? A. That was occupied?

Q. After the 1st of May, 1869, and during the remainder of that year? A. I think it was—I am not positive, however, because the houses have been frequently unoccupied.

Q. You have no recollection specially on that point? A. No, sir; there were quite a number of houses unoccupied, which we fitted up. They were very much out of repair, and we repaired them.

By Mr. STICKNEY:

Q. Your present residence is, where? A. I have been residing at 313 until within a few days.

Q. Your present residence is where? A. I have a room in the Opera House, now.

Q. What means have you of fixing the date when you moved into No. 313? A. I can tell precisely the date by referring to the bills when I bought the furniture to furnish the room. I furnished my own rooms, and the date of the bill will be about the date I moved in.

Q. From whom did you buy the furniture? A. I bought the furniture from a man by the name of Baxter, I think, on Canal Street.

ORANGE H. STEVENS, a witness, being duly sworn, testifies:

Mr. STICKNEY:

Q. You were in 1869 an employee of the Erie Railway Co.? A. Yes, sir.

Q. And of course you knew Mr. Fisk and Mr. Gould and saw a great deal of them? A. Yes, sir.

Q. Do you remember the time when Mr. Fisk and Mr. Courter, the Receivers, went up to Albany to take possession of the Albany and Susquehanna Railroad Co.? A. Yes, sir.

Q. On Friday, the 6th of August? A. I do not remember the day of the week but I know it was the 6th of August.

Q. 1869? A. Yes, sir.

Q. Were you at the Opera House that evening? A. No, not in the Opera House.

Q. Did you see Mr. Fisk on that evening? A. I saw him on the train, and I saw him during the day.

Q. Did you see him that evening near the Opera House? A. I cannot say that I did.

Q. Did you see him in the Erie Railway office that evening? A. During the day I saw him.

Q. On that evening where did you see him besides? A. I did not see him until I got to the depot. He was at the depot.

Q. Are you sure you didn't see him at the Opera House? A. I did not.

Q. Mr. Fisk at that time lived where? A. At 313, I believe.

Q. West Twenty-third Street? A. Yes, sir.

Q. He had rooms fitted up for some time before that, had he not? A. He owned the house for sometime.

Q. And had rooms fitted there before that? A. Yes, sir.

Q. Who occupied the house with him? A. I guess George Fowler lived there, and I guess Mr. Cole, I do not know—I am not positive.

Q. For how long prior to that time had Mr. Fisk his rooms fitted up in that house? A. I cannot say, I guess four or five months.

Q. You used to see him there frequently? A. Yes, sir.

Q. Was Mr. Cole there with him? A. I saw Mr. Cole there, and I saw George Fowler there.

Q. Both of them? A. Yes.

Q. Where is Mr. Fowler's place of business? A. I do not know.

Q. Do you remember what his business was in August, 1869? A. I do not know; I think he had charge of oil over on the meadows in Jersey.

Q. What oil? A. The oil tanks.

Q. Of the Erie Railway Co.? A. I do not remember whether they belonged to the Erie Railway or some company.

Q. They were the oil tanks connected with the Erie Railway Co.? A. Yes.

Q. Do you know where he now lives? A. I do not.

Q. Did you see Judge Barnard any time that evening? A. No, sir.

Q. Or Mr. Sterling? A. I cannot say whether I saw Mr. Sterling or not.

Q. What time was it you saw Mr. Sterling and Mr. Fisk going from the Opera House? A. I did not see them at all that night. You refer to the 6th of August?

Q. Yes? A. No, sir, I did not see them at all.

Q. Are you sure? A. I am quite sure.

By Mr. CURTIS:

Q. Have you any distinct recollection of how No. 313 was used in the summer of 1869? A. How it was used in 1869?

Q. In August, 1869. Have you any definite recollection as to how it was used? A. It was used by the occupant, James Fisk, Jr., I believe.

Q. Have you any definite recollection? A. It was his residence.

Q. Have you any definite recollection when Mr. Fisk took up his residence there? A. No, sir; I could not say.

Q. You cannot tell when it began? A. No, sir.

Q. You do not know whether the house was occupied in any way in August, 1869—during the first part of the month? A. Yes, sir; I guess it was long before that.

Q. How do you think it was occupied long before that? A. By James Fisk, Jr.

Q. I understood you to say that you did not recollect when he moved in? A. I cannot tell the exact day, I know he bought that property a good many months before that.

Q. Owned it for sometime, he and Mr. Gould, had they not? A. Yes, sir.

Q. Under whose charge was it? A. I suppose James Fisk's, Jr's.

Q. You do not know anything about its being in the charge of Cole do you? A. No, I do not.

Q. Do you know anything about the former tenant who went out in May, 1869? A. No, sir.

Q. Do you know whether the house stood empty from May, 1869, so far as a permanent tenant or occupant was concerned until the time Mr. Fisk moved in? A. No, I do not.

Q. Do you know whether it was furnished at all in the summer of 1869? A. Yes, I know it was.

Q. What period in the summer? A. Well, June or July.

Q. Were there not mechanics at work there, in June or July? A. Yes.

Q. Do you know when their work was terminated? A. No, I do not.

Q. You do not know when the house was ready for occupancy; do you? A. No.

Q. As matter of positive recollection are you able to say that on the 6th of August, 1869, Mr. Fisk had taken possession as his residence of any part of that house? A. I think he occupied the whole house. He may have had friends live with him. I know he did have George Fowler living with him.

Q. Was that before or after? A. I think he went there at the time he did.

Q. Did he go there before the Erie Railway offices were moved up from the old buildings? A. Yes. The offices were not moved up at that time from the old building. They were moved up later.

Q. Mr. Fisk began to occupy that house before the business came up from the old building? A. I think he did.

Q. Do you recollect being in there at all during the summer? A. Yes; I was in there several times during my life-time. I cannot remember the dates.

Q. Do you recollect being in there during the early part of the month of August at all? A. I do not know that I was.

Q. Is your memory good about such matters? A. Yes, sir.

Q. Do you know what Mr. Fowler was doing that summer? A. Well, I believe he was employed over there taking charge of these oil tanks.

Q. Where did Mr. Fisk pass the summer? A. Do you mean his summer residence?

Q. Where did he stay? A. I guess he was in New York most of the time.

Q. Was he not at Long Branch? A. I do not know but he was.

He didn't have any cottage there that year, I do not think. He had next year.

Q. Did he have rooms at the hotel there? A. He might have had.

Q. In considering that fact that he had rooms at one of the hotels at Long Branch, and testing your recollection the best you can, are you able to say positively that he was occupying any rooms in that house on the 6th of August, 1869? A. Whether he was occupying them himself in person?

Q. Yes, sir; whether he was occupying—was using them at all—whether his lodgings were there? A. I think they were.

Q. On the 6th of August, 1869? A. I think they were; to the best of my recollection they were.

By Mr. STICKNEY:

Q. You went with Mr. Fisk on that night to Albany? A. Yes, sir.

Q. That circumstance made a strong impression on your mind; did it not? A. Yes.

Q. You remember the things that happened at that time very distinctly? A. Yes.

By Mr. ANDREWS:

Q. Were you in that house that night at all? A. No, sir.

Q. When had you been there? Within a week before or a month had you been there? A. No; I do not know that I had.

Q. Did you go there after at any time within a month? A. Yes, sir; I went there after that.

Q. How long after that? A. Within a month or about a month. I was there just a month after that night.

Q. Was the Colonel living there then? A. Yes.

Q. You do not know when he moved in? A. No.

MR. ANDREWS:

When I say the Colonel, I mean Colonel Fisk.

JAMES IRVING, a witness, being duly sworn, testifies:

By Mr. PARSONS:

Q. Are you attached to the police, and if so, in what capacity? A. I am at present captain of the detective force.

Q. Were you attached to the police force of this city, and if so, in what capacity in the fall of 1868? A. I was a detective attached to the detective department at that time.

Q. Where were your headquarters? A. 300 Mulberry Street.

Q. The police headquarters? A. Yes, sir.

Q. Do you remember the election which was held in the fall of 1868, at which Judge Barnard was elected Judge of the Supreme Court for his present term of office? A. I believe I do.

Q. Do you remember the arrest of some men on or about October 31st, 1868, charged with an attempt to illegally register themselves as

voters at that election? A. I remember there was some arrested, but not by whom.

• Q. Were they kept in confinement? A. Yes, sir; they were locked up in our department, at the headquarters in Mulberry Street.

Q. Can you give me their names? A. I can not.

Q. Would you remember if their names were stated? A. Not positively; I could not.

Q. Do you remember whether there was one named James O'Hara? A. The name is familiar with me; I believe that was one of the names on our record.

Q. Do you recollect whether the name of one was Samuel Fitzgerald? A. I would not be positive as to the name; the names on the record I have got.

Q. State them—give the names from the record which you have? A. (Producing the paper.) I don't know of my own knowledge, except what I have found.

By Mr. CURTIS:

Q. Does the record say the cause of the arrest? A. The cause was illegal voting—registering, if you please.

By Mr. PARSONS:

Q. State the names, if you please? A. James O'Hara was one of them, Daniel Hanna, Alexander Morrison I believe, William Edwards and James Watson.

Q. Any others? Lawrence Fitzgerald, I think.

Q. Lawrence Fitzgerald or Samuel Fitzgerald? A. I have got it Lawrence.

Q. Were there any others? A. Not to my knowledge; it seems that they were arrested by somebody else and left there.

Q. Was Thomas Wenhold one? A. Not that I am aware of.

Q. Will you examine your memorandum and see? A. (After looking.) Yes, sir; age 24.

Q. Was Thomas Seymour one? A. (After looking.) Yes, sir.

Q. How many of them were there altogether? A. There are seven.

Q. Was a writ of *habeas corpus* issued for these men? A. Yes, sir.

Q. Was that writ served upon you? A. It was served on me; it was my night on duty in the office that night; we have turns day and night, and it happened to be my night.

Q. The writ was served upon you? A. Yes, sir.

Q. Who procured the writ? A. That I don't know.

Q. Who was counsel—I mean by whom was the writ obtained? A. Mr. Howe.

Q. William F. Howe? A. Yes, sir.

Q. By whom was the writ allowed—by what Judge? A. I would not be certain of what Judge, but I think it was Judge Barnard.

Q. Where and when was it returnable? A. It was returnable forthwith.

Q. Where? A. At No. 23 West Twenty-first Street.

Q. Judge Barnard's house? A. Yes, sir.

Q. When was it served—at what hour in the evening? A. I would not be positive as to the hour—it was pretty late; I would not be certain of the time—I could not be certain.

Q. What do you mean by pretty late? A. Well it was after ten or about ten o'clock I should judge.

Q. Of what day? A. The 31st of October.

Q. 1868? A. Yes, sir.

Q. What did you do with these men upon the service upon you of the writ? A. It was a rather late hour in the night, and I got men to go up with me to the Judge's house with the prisoners.

Q. What hour was it when you reached there? A. That I would not be positive about—I could not.

Q. Was it as late as eleven o'clock? A. I would not be certain.

Q. What is your best recollection of the hour? A. I think it was after ten o'clock.

Q. Did Mr. Howe go with you? A. Yes, sir; I believe he was with me and went in with me.

Q. Who served the writ upon you? A. I think it was Mr. Howe.

Q. What took place when you reached Judge Barnard's house—did you go in the house? A. Yes, sir.

Q. Did Mr. Howe go into the house? A. Yes, sir.

Q. What was done with the men? A. They were discharged.

Q. Before they were discharged, where were the men left? A. They were left in the charge of the other officers outside:

Q. On the sidewalk? A. Yes, sir; there were too many of them to bring in; they were rough looking people.

Q. Did anybody go in the house but Mr. Howe and yourself? A. I would not be certain; I know Mr. Howe was there.

Q. Have you any recollection that anybody went in that house but Mr. Howe and yourself? A. I have not at present.

Q. Did you see Judge Barnard? A. I did not.

Q. Did you take the writ with you to Judge Barnard's house? A. I believe I did.

Q. What was done with the writ after you reached the house? A. Mr. Howe got the writ and saw the Judge.

Q. Did you deliver the writ to him—to Mr. Howe? A. Yes, sir.

Q. What did Mr. Howe do with it—did he write anything upon it? A. I believe he did.

Q. Is that your recollection, that he wrote something on the writ? A. I believe he did, something.

Q. To whom was the writ then given? A. I do not know.

Q. Was it handed to a servant girl? A. I think Mr. Howe and the servant girl went to the Judge. I think the Judge had been a little unwell, and had retired at that time.

Q. Did they go up stairs? A. I believe so, sir.

Q. Are you quite sure that Mr. Howe went with the servant girl? A. I would not be positive.

Q. Was not the writ handed to the servant girl, and did she not

take it up stairs to Judge Barnard, and Mr. Howe not go with her. A. I think it was handed to the girl, but whether Mr. Howe went or not, I do not recollect.

Q. Did the girl go up stairs? A. I believe she did.

Q. Where did you and Mr. Howe go—where were you? A. I cannot tell; we came direct from the office.

Q. In what room in the house I mean did you go—in the parlor or in the hall. A. We went in the parlor and in the hall also.

Q. Did Mr. Howe go with you in the parlor? A. I think he did. We went in the back parlor.

Q. Did he remain there with you? A. He went out—he was not all the time with me—he went out towards the front—I didn't notice—I didn't pay any attention particularly.

Q. Was this after the writ had been handed to the servant and taken up stairs to Judge Barnard that Mr. Howe went to the front part of the house? A. I would not be positive which.

Q. Did the servant return after an interval of time with the writ? A. Yes, sir.

Q. Did she hand it to you? A. No, sir.

Q. Who did she hand it to? A. To Mr. Howe.

Q. Did Mr. Howe then show it to you. A. He did.

Q. Had Judge Barnard signed his name to anything upon the writ? A. Mr. Howe asked me if I was satisfied that that was his signature, and I said that I was.

Q. Mr. Howe said Judge Barnard had signed something on the back of the writ? A. Yes, sir.

Q. Was that a discharge of the prisoners? A. Certainly it was.

Q. That discharged them, and you let them go—is that so? A. Well, that was the way, of course.

Q. Did you then retain possession of the writ? A. That I would not be positive about at all.—no, I think—that I don't recollect.

Q. What became of the writ and the discharge upon it? A. That I cannot tell.

Q. Do you remember taking it with you to the police headquarters after the discharge of the prisoners? A. Well, I think I did, but I would not be positive about it at all.

Q. Is it your best recollection that you took the writ after the prisoners had been discharged, to the police headquarters on your return? A. I have always thought so, but I would not be positive about it.

Q. Do you remember what you did—or what is your recollection of what you did with the writ when you reached the police headquarters? A. I think I took it back and gave it to Mr. Acton. There was a man named Bliss sitting there. I would not be positive that I did it.

Q. Is that your best recollection? A. I know I went back any how, but I do not recollect about the writ positively. I would not swear that I took the writ back.

Q. What is your best recollection as to whether you did or not? A. I have got the idea that the counsel had the writ.

Q. What—Mr. Howe? A. Yes, sir.

Q. Was the Mr. Acton of whom you speak, Mr. Thomas C. Acton, who was police commissioner? A. He was at that time, and president of the board of police.

Q. Were you called upon by Judge Barnard, either personally or in any way on that occasion to make any return to the writ? A. There is a general return made at the office before we left. At the police headquarters there is a general return made.

Q. Did you make a return on that occasion? A. I did not personally, myself.

Q. Was there any return made—was anything sent up-stairs to Judge Barnard with the writ except what Mr. Howe wrote on the back of it? A. I would not be positive about that.

Q. Have you any recollection that anything else was sent up-stairs to Judge Barnard? A. No, sir; I have no recollection.

Q. Were you asked to see Judge Barnard—was any message of that kind brought to you from Judge Barnard? A. Not that I recollect.

Q. You are quite sure you did not see him? A. No, sir; not that evening.

Q. That is what I mean—you remember that you did not see him that evening? A. No, sir.

Q. You mean by saying “no, sir” that you did not see him? A. That I did not.

Q. Did you take the prisoners to Judge Barnard immediately on the writ being served upon you? A. I was ordered to do it by one of my superiors, I do not know who.

Q. Did you do it? A. Yes, sir.

Q. Was there any time to give notice to the District Attorney or anybody in the District Attorney’s office? A. Well, I do not know how long this writ was served previously to my getting it.

Q. From whom did you receive the writ? A. That I do not recollect.

Q. Did you not state that Mr. Howe served the writ? A. He came into the office in relation to the writ. I am not certain whether Mr. Acton or who ordered me to go up with the writ.

Q. Did you immediately proceed with the prisoners and with Mr. Howe to Judge Barnard’s house? A. Yes, sir.

By Mr. CURTIS :

Q. Was that a very stormy night? A. Really, I do not recollect.

Q. Don’t you recollect that it rained violently? A. It may have been so, but I disremember.

Q. When were these men first arrested? A. I believe it was over in the Seventh Ward.

Q. When? A. That I do not know.

Q. Do you know how long they had been confined at headquarters before this writ came? A. No, sir; the exact time I do not know.

Q. Do you know whether they were arrested on any process? A. I do not believe they were.

Q. You do not think there was any process? A. No, sir.

Q. There was no complaint, was there? A. Not that I am aware of.

Q. Were they not arrested by Mr. Kennedy's orders—the superintendent's—on suspicion that they were intending to register falsely?

A. I believe they were.

Q. Where were they taken? A. They were brought to headquarters.

Q. Where were they put there? A. They were locked up in different cells.

Q. In different cells—how many of them were there? A. I believe there were seven.

Q. Each was put in a separate cell? A. That I would not be certain of. I suppose one or two in some of them.

Q. You have no means of telling how long they were there? A. Yes, sir; I can find out.

Q. You cannot now state how long they were there? A. No, sir; not positively.

Q. Did you understand from Mr. Kennedy or anybody else about the office that these men had been before any magistrate under any charge? A. No, sir.

Q. You did not? A. No, sir; I had nothing to do with the arrest whatever myself.

Q. You heard it spoken of there? A. Yes, sir.

Q. Did you hear any process spoken of—any warrant of any kind from a magistrate or anybody else? A. No, sir; I did not.

Q. When the writ came who made out the return on it? A. From where?

Q. When Judge Barnard's writ of *habeas corpus* came down and was served, who was it directed to?—was it directed to the police commissioners? A. To whoever happened to be in charge, I think.

Q. And you happened to be in charge? A. Yes, sir; that night, I think.

Q. Who made the return on the writ before you left the office? A. That I would not be certain about.

Q. There was a return made, was there not—was there not something written on that writ to state the cause why the men were held, and why they were arrested, and who had arrested them? A. I believe there was.

Q. Do you know what that said? A. I don't remember the exact words.

Q. I don't ask the exact words, but the substance. Did it not state that there was no charge against them? A. The writ?

Q. Didn't the return on the writ state that there was no charge against these men? A. That I do not remember.

Q. Had any charge against them been lodged in the office—any written charge of any kind? A. For an attempted illegal registry was on the books. I do not know that there was any proof of that fact.

Q. That was just entered so on the book by the officer who brought them in? A. I believe Inspector Walling brought them in, with other officers.

Q. Didn't Mr. Kennedy say in your hearing, or did you not hear of his saying that he would keep the men locked up so that they could not register until the registration books were closed at 11 o'clock that night, and that they could not go to Judge Barnard's house before that time? A. I had not seen Mr. Kennedy that night personally myself.

Q. You didn't hear him say that? A. No, sir.

Q. And you didn't hear of his saying it? A. No, sir; I didn't see him.

Q. You didn't hear that rumored? A. I heard he had ordered Inspector Walling to make a raid on these people; it was rumored around the building, but personally I do not know.

Q. How long had these men been actually confined there before this writ was taken out? A. The exact time I cannot tell you.

Q. Were they arrested the same day? A. I would not be certain whether it was the same day or the day before.

Q. Was it not three days before? A. That I do not know at present.

Q. Was it some days before? A. I am not certain of the time.

Q. When you came in charge that night of the headquarters, didn't you understand that those men in the cells under arrest had been there several days? A. I did not know how long.

Q. Did you not understand that they had been there several days? A. I did not understand that they were there seven days.

Q. I said "several" days? A. I do not think so—not that time; I do not remember.

Q. Do you think they had been there more than one day? A. I would not be certain about the time—I could not; in fact I did not know they were there until I heard of the writ.

By Mr. PARSONS :

Q. Did you know anything whatever about these men, or of the charge against them, or of their arrest, or of the proceedings in the matter prior to the service upon you of the writ? A. I had heard rumors of the arrest, that was all; that there was somebody arrested, but who they were, or anything about it, I did not know.

Q. Was it before that evening you heard the rumor? A. No, sir; it was that day, sometime.

Q. Sometime that day. When did you go on duty that day? A. Six o'clock in the evening.

Q. Have you any recollection of anything being written by way of return on the writ when you took it to Judge Barnard's house that evening? A. I do not remember what was written on it.

Q. Who was there at headquarters in charge—anybody besides yourself? A. Yes, sir; there was Mr. Elder, who was there on duty the same night, I believe.

Q. Who was in charge? A. There are two men every night, and both have charge.

Q. He and you were the two men in charge. Did you write anything upon the writ? A. No, sir.

Q. Did you not proceed immediately upon the service of the writ with the prisoners to Judge Barnard's house? A. Yes, sir; I was ordered to go there—by whom I do not know; I do not remember by whom.

Q. Do you know anything about the charge which had been lodged against the men except as you have stated that it was for attempting illegally to register? A. That is all I know about it.

Q. Whether there was or was not a warrant, you do not know? A. I would not be certain of anything in relation to that; however, I do not think there was.

Q. Is it usual to wait for the issue of a warrant when a person is detected in the actual commission of crime? A. No, sir.

Q. Do the police arrest at once in such cases? A. If they are caught in the act they generally do.

By Mr. CURTIS:

Q. Do you know what it is to attempt to register illegally—do you know what the offence is? A. What the penalty is?

Q. Attempting to register illegally? A. I do not know that I understand the penalty of it.

Q. Do you understand what the fact is—what the wrong is? A. I should consider it a misdemeanor—I do not know.

Q. That night that you were at Judge Barnard's, didn't he come to the head of the stairs in his night clothes and speak to you? A. Not that I remember.

Q. Do you recollect of his calling out to you down stairs as you stood in that hall, and asking you whether there was any charge against these men, and your reply that there was not any? A. I do not remember that.

By Mr. PARSONS:

Q. Do you remember producing the original writ of *habeas corpus* with Judge Barnard's discharge upon it before the Committee of Congress sent here to investigate the alleged frauds in the election of the fall of 1868? A. I do not remember.

Q. Have you ever seen a printed copy of that testimony given before that Committee? A. No, sir.

Q. Do you remember being examined before that Committee? A. I do remember of being examined, but I never was certain in relation to the writ and never will be.

Q. Where were you examined before the Committee? A. I was subpoenaed down there before the Congressional Committee in the United States Court on Chambers Street.

Q. Do you remember giving testimony? A. Yes, sir; I remember being sent for, and I had to go down there and give my testimony.

Q. Can you not recollect whether you did on that occasion produce the original writ? A. No, sir; I cannot be positive.

Q. If, on the occasion of that examination, you produced a paper and stated that it was the original writ with Judge Barnard's discharge on it, was your statement correct? A. If I did, I don't recollect it.

Q. It is not the question whether you now recollect it; but if you did make this statement, was the paper of which you then spoke the original writ—in other words was the statement you then made true? A. If I made it, it was true.

THOMAS C. ACTON, a witness, being duly sworn, testifies:

By Mr. PARSONS:

Q. In October, 1868, what was your official position in the City of New York? A. President of the Board of Metropolitan Police Commissioners.

Q. Did you at that time know James Irving, then attached to the Detective Department at 300 Mulberry Street, and since then a Police Captain? A. I did know him. I have known him for a good many years.

Q. Do you remember the discharge by Judge Barnard on the evening of October 31st, 1868, of a number of persons confined at the Police Headquarters, for whom Judge Barnard issued a writ of *habeas corpus*, returnable forthwith, that night at his house in Twenty-first Street, in this city? A. I recollect the circumstance of a number of men being taken up there from the report of the men who came back. I was at the Fifth Avenue Hotel that evening with the Superintendent, and we took a coach and went to the headquarters, I should think about 10 or 11 o'clock, and when we arrived there we heard that the men had been taken up by some officers to Judge Barnard's house, and they said that they had found the Judge in bed or in his bedroom, and that he had dismissed the men.

Q. This statement was made on their return? A. Yes, sir; on their return to headquarters. It was while we were there that they came back. I should think about 11 o'clock.

Q. Did Captain Irving say he went with the men? A. I think he said a man, by the name of Hayes, was with him.

Q. Was it before the election—the evening before? A. I think it was Monday evening, if I recollect correctly. I did not see the men at all. They were not sent in during my time. I think Inspector Walling was the man who had made the arrest or who ordered the arrest to be made.

Q. Was that the election at which Judge Barnard was elected Judge of the Supreme Court for his present term of office? A. I do not remember that. I do not recollect that he was running at the time—I am not positive.

Q. You have no recollection on that subject? A. It was the Presidential election and the Gubernatorial election. Who was running for Supreme Court Judge I do not remember.

Q. On what charge were these men held at the Police Head-

quarters? A. For false registering—I think that was the complaint against them. They were supposed to be a portion of Reddy the Blacksmith's men, if I recollect aright. It strikes me that they were a part of the gang belonging to Reddy the Blacksmith.

Q. Do you know the name of Reddy the Blacksmith? A. Varley, I think.

Q. William Varley? A. I think that is the name he is known by correctly.

Q. Did you ever see the writ of *habeas corpus*? A. No, sir; never to my knowledge. I never saw any papers in connection with the case at all.

Q. Do you know what became of the original writ after the discharge of the prisoners? A. I do not know. I was taken sick soon after that, and I have not been round the headquarters since. The following month I guess it was I was taken sick and I knew very little about the department since that time.

Q. Were you examined as a witness before the Congressional Committee? A. No, sir; I was not.

By Mr. CURTIS:

Q. Do you know how long these men had been confined at the Police Headquarters? A. I do not know exactly, but I should think during that afternoon—that they were arrested that afternoon.

Q. Do you know that they were arrested the same day? A. The same day I think—that is my impression now. It was four years ago and I would not be positive. I think they were arrested during the afternoon and released the same night.

Q. They were not arrested a day or two before? A. I am pretty certain they were not, still it is possible they may have been. As I say, it was four years ago, and I have never paid much attention to it.

Q. They were simply arrested and locked up by the authority of the police, without any warrant from a magistrate? A. Yes sir; without a warrant.

Q. Was there any charge? A. The charge was “falsely registering”

Q. How was that charge ascertained? A. That I do not know—that I cannot answer exactly for I knew nothing of the arrest. The arrest was made, I think, by Inspector Walling.

Q. Did you look at the charge in the book? A. No sir; I did not.

Q. Did you ever see it? A. No sir; I do not think I ever saw it at all. I know the fact of their return after having been to Judge Barnard with the prisoners and they making a statement that they were discharged. Captain Walling was there and he stated what they were arrested for?

Q. Did not the officer report that he had said to Judge Barnard that there was no charge against these men? A. Nothing of the kind was said at all.

Q. The next day was the election? A. I think that is the way. It

appears to me that it was on Monday night and the election was on Tuesday.

Q. Suppose these men had remained there under arrest—A. I may not be correct about that time, though I am pretty certain it was. It may have been a week before the election. I know it was Monday night—I guess it was a week before the election.

Q. Was not the 31st October the last night to register? A. I guess that possibly it was the last day.

Q. They could not register after that? A. They could not register after that day. There may have been another day for correcting the registry. I guess it was the last day for registering, as the law was at that time. It has been altered since then.

Q. Do you know of any of these men being arrested after that day for the same offence or similar offence? A. I do not remember. We made a great many arrests all along. We were in the habit of doing a good deal in that way, and I never kept a particular account of them.

By Mr. PARSONS:

Q. State the routine on the arrest of prisoners who were brought to Police Headquarters?—when do they go before the magistrate—what is done with them after their arrest? A. If there is a magistrate on the bench they go immediately before the magistrate at the nearest Court. The general rule was to take prisoners to the nearest magistrate as soon as they were arrested. But we used to do a good deal of arresting after the magistrates got off from the bench. It was more effective that way than the other. (Laughter.)

Q. But in that event when were the prisoners taken before the magistrates? A. When he was on the bench.

Q. But in the event that the magistrate had left the bench? A. He would remain in the cell until the morning. That was where we generally got our grip. (Laughter.)

Q. And in the morning the prisoner would be taken before the magistrate? A. Yes, sir; In the case of *habeas corpus* we generally answered them in twenty-four hours; "forthwith" we contended meant just twenty-four hours as a general rule. I do not know who sent those prisoners up in that case; I do not think Kennedy did. (Laughter.) He was not apt to do it that way.

Q. I ask whether prior to this there had been any considerable number of arrests of persons charged with violations of the registry laws? A. We had been doing a little in that line just to initiate us a little, but probably not as much as there has been since.

Q. Do you remember whether writs of *habeas corpus* had been issued for any such persons prior to October 31st, 1867? A. I cannot answer that. We used to get a good many *habeases*. We were all the time getting them. It was no new thing to have *habeases* served on the police, or injunctions either. I had 999 at one time on me. (Laughter.)

Q. Do you remember the Judges by whom such writs of *habeas corpus* were issued to your department in the case of persons charged

with the violation of the registry laws shortly prior to October 31st, 1868? A. I do not know that I could answer that exactly. We received a good many. Judge Barnard occasionally paid a little attention to us and so did Judge Cardozo. I think Judge Cardozo paid more attention to us than Judge Barnard. He issued more injunctions on me than any man that I know of. I do not remember from whom we received them all.

Q. Do you remember Judges Barnard and Cardozo as having issued such writs of *habeas corpus*? A. I know we were making arrests of that kind; during that month there was a good deal of work going on. Whether there was any *habeases* issued before that night, of that particular kind of cases I am not positive.

By Mr. ANDREWS :

Q. Did Judge Barnard ever issue any injunction against you? A. I do not know that he did. He was generally very kind to me, I believe, in that line. But Cardoza, however, went it 900 strong, though I did not pay much attention to him. (Laughter.)

Q. You were not in the habit of paying much attention to anything unless you chose? A. I learned to take my own way.

Q. You held your own Court? A. I did generally. (Laughter.)

BENJAMIN C. THAYER, a witness, being duly sworn, testifies :

By Mr. PARSONS :

Q. How long have you been a lawyer practicing in the City of New York? A. Between fifteen and eighteen years.

Q. Did you represent any parties in a litigation pending in the Supreme Court, entitled "In the matter of John A. Duff, Receiver? A. I did.

Q. When did that litigation commence? A. Do you mean when my connection with it commenced, or when the litigation commenced?

Q. I asked when the litigation first commenced, I mean in the position which it assumed when it became the matter of John A. Duff, Receiver? A. In 1867, July 25, John A. Duff was appointed Receiver of the Olympic Theatre property.

Q. What was the proceeding or the nature of the proceeding in which he was appointed Receiver? A. In order to get at that I shall have to go a little further back.

Mr. ANDREWS :

Q. I suppose it is not necessary for us to renew the objection which we made before? *Witness* (resuming)—In 1856, Mr. John M. Trimble, an architect and builder in this city, procured a lease from a man by the name of Meinnell for two lots of ground on Broadway, and three on Crosby street, above Houston street; I think they were Nos. 624 and 626 Broadway. He commenced the construction of a theatre and became embarrassed. He borrowed money of the firm of Whitney &

Earle, as it was alleged in the complaint, and gave Whitney & Earle an absolute transfer of this lease as security for the loan. In 1857, January 7th, Trimble becoming further embarrassed, made an assignment of all his property to William — Roberts. I forget his middle name. Roberts made a demand for this property from Whitney & Earle. They claimed to be the owners of it absolutely. A suit was brought on behalf of Roberts against Whitney & Earle to have that paper declared a mortgage—the absolute transfer of this lease. The Court declared it a mortgage. Then on the final decree it was decreed that it should be referred to a Referee, and was so referred, and there was found \$26,000 due Whitney & Earle. The Court then ordered \$26,000 to be paid over to Whitney & Earle by Roberts within thirty days, and the property should be transferred to Roberts, and unless the transfer was made within sixty days the complaint should stand dismissed out of Court. The property was not redeemed within sixty days, and I filed a bill on behalf of a Receiver, Jesse N. Bolles, to redeem the property.

Q. In what proceeding was Jesse N. Bolles appointed Receiver? A. He was appointed Receiver in two judgments.

Q. Were they judgments against Trimble? A. Judgments against Trimble. He was appointed Receiver.

Q. Were the proceedings in which he was appointed Receiver supplementary proceedings? A. They were.

Q. Was it as Receiver in these supplementary proceedings that Bolles, through you, brought his action to which you refer? A. It was.

Q. State now, if you please, what your suit was brought for—the suit brought in the name of Bolles, Receiver? A. I set up in my complaint that they had recovered judgment so and so, and that a Receiver had been appointed; that the assignee, Roberts and Trimble, and a man by the name of John A. Duff had conspired together to prevent the redeeming of this property.

Q. To prevent the redemption by Roberts and the assignee? A. Yes, sir; and that Duff had taken possession of this property under this disagreement between them; had bought the decree from Whitney & Earle that they had obtained.

Q. The decree entitling them to receive \$26,000 from Roberts? A. Yes, sir; and Roberts had consented that Duff might step in the shoes of Whitney & Earle.

Q. State what was the relief sought? A. I alleged in my complaint the agreement between these three parties to get possession of this property; that Duff was to occupy it for three years, and at the end of three years it was to be divided between Trimble and Mr. Duff and that Roberts' assignee had consented to this arrangement, and I asked the Court that we might pay what there was due, if anything.

Q. To Whitney & Earle? A. To Mr. Duff. At this time he had got possession.

Q. To Duff as assignee of Whitney & Earle? A. Yes, sir; that we might redeem the property.

Q. Was it in that suit that Duff was appointed Receiver of the Olympic Theatre property? A. After I got my judgment in that case, and while the accounting was going on Mr. Duff was appointed the Receiver of this property.

Q. Now, you may go on and state if that suit went to trial, and whether Bolles succeeded in the suit? A. It was brought to trial, and the plaintiff succeeded; that is Mr. Bolles did.

Q. A reference was ordered to ascertain what was due at the time to Duff as assignee of the claim of Whitney & Earle? A. Yes, sir.

Q. Pending that reference, Duff was appointed Receiver of the property? A. Yes, sir.

Q. State the day when Duff was appointed Receiver? A. July 25th, 1867.

Q. Do you know what Duff's business was at that time? A. Just previous to that he used to keep a restaurant in the Times' building. I think he had had a lease for a short time of that theatre.

Q. The Olympic Theatre? A. I think for a few months, I will not be positive.

Q. Had he, previous to his being appointed Receiver, been engaged in the management of a theatre, or been the proprietor of a theatre so far as you know and understand? A. So far as I know he had—that very theatre—for some months—some little time previous in connection with Jefferson, I think.

Q. Subsequent to the appointment of Duff as Receiver, was there an application made in his behalf to the Supreme Court for leave to lease the theatre property, held by him as Receiver? A. There was.

Q. When was that application made, and to whom? A. About May 15th, 1868, to his Honor Mr. Justice Barnard.

Q. Upon what was that application based—a petition? A. A petition of Mr. John A. Duff, and I think, the affidavit of Mr. Hayes.

Q. Who was Mr. Hayes? A. Mr. Hayes was a son-in-law of Mr. John A. Duff, the Receiver.

Q. Who represented John A. Duff on that application? A. Mr. John K. Hackett was the attorney, but Brown, Hall & Vanderpoel did the business.

Q. Which member of that firm personally, had charge of the business? A. I do not know which one came into Court, but my impression is, it was Mr. Vanderpoel came into Court on that motion. I think it was Mr. Vanderpoel.

Q. Do you remember whether Mr. A. Oakey Hall (now Mayor of the City), appeared for his firm in any of that litigation? A. Oh! yes, sir; a number of times.

Q. Did he appear upon that motion? A. I don't recollect that he did on that motion, but on the appeal I think he did. I would not be positive whether it was Mr. Hall or Mr. Vanderpoel who appeared on that motion. It was one of them.

Q. Did Mr. Hackett appear on the motion, personally? A. My impression is, that he did not.

MR. CURTIS:

I do not see the point of this.

MR. PARSONS:

I think you will have no difficulty in seeing it after Mr. Thayer shall have proceeded with his statement.

Q. Was that motion made on notice to you? A. It was.

Q. Did you attend upon that motion? A. I did.

Q. Did the order made upon that motion eventually go to the Court of Appeals, and does the case on appeal to the Court of Appeals—the printed case—show the papers upon which the motion was made? A. It did go to the Court of Appeals twice, and the case does show the papers upon which the motion was made.

MR. CURTIS:

Where is that reported?

MR. PARSONS:

In 41 Howard.

Q. What was the application made by Mr. Duff on that motion—for leave to lease, to whom, and at what rent? A. It was for leave to lease the theatre to Mr. Hayes for \$15,000 a year.

Q. For how many years? A. For three years.

Q. Did you oppose that application? A. I did.

Q. Upon what? A. In the first place I read affidavits showing the value, what the property was worth, and an offer by Thomas E. Morris for \$20,000.

Q. To lease at \$20,000 per year rent? A. Yes, sir; and from Joseph Tamaro for \$23,000, and another of Barney Williams, a theatrical man of the city, for \$21,000 for one year, with security.

Q. What was the responsibility of these parties? A. Barney Williams is reputed to be a man worth over a half million of dollars.

Q. Were these offers submitted to Judge Barnard? A. They were in June, 1868.

Q. Was anything said to you upon the hearing before Judge Barnard with reference to the necessity of immediate leave, if either of these offers furnished by you were to be accepted? A. I cannot recollect as to whether I urged immediate leave, but it was stated in the petition, from John A. Duff, that it was necessary to get the theatre a number of months before the theatre was to be occupied, so that the man who was to have the theatre should have time to make his scenery and engage his actors, and he said it was absolutely necessary and that was the reason he gave for making the motion in May. I think that the motion was made in May.

Q. Do you mean several months prior to the time the lease should take effect? A. Yes, sir.

Q. From what time was the lease to take effect? A. From the 1st September. I understood September to be the commencement of the theatrical season for the fall.

Q. What did Judge Barnard do on that motion? A. He heard us read the papers and I think that the counsel was heard, and he took the papers. About two or three days after Justice Barnard took the papers, we received an offer for the theatre from William E. Sinn, of Baltimore. The letter was written from Philadelphia, and was dated May 22, 1868.

Q. What was the rent which Mr. Sinn offered and for what length of lease? A. He offered to take the theatre one, two or three years from on or about the first day of September at a yearly rental of \$25,000 with security, if required.

Q. Did you obtain about that time offers in addition to those which had been submitted to Judge Barnard upon the hearing of the motion? A. I did; I received another offer from C. D. Hess, from Chicago, a person who had charge of the Opera House there.

Q. The Crosby Opera House? A. The Crosby Opera House.

Q. For what rental and for what length of time? A. Two or three years, from, on or about the 1st September, at the yearly rent of \$22,000, with proper security if required; I also received an additional offer from Barney Williams for \$25,000.

Q. For what length of time? A. He says, "I will increase my offer if necessary to the sum of \$25,000 per year;" the former offer of \$21,000 specifies the length of time; that offer is contained in the printed case referred to.

Q. The printed case on the Appeal to the Court of Appeals? A. Yes, sir.

Q. What did you do upon obtaining these additional offers, so far as concerned Judge Barnard? A. I made a copy of these offers and served a copy of them upon John K. Hackett.

Q. With affidavit verifying the offers of which you speak, or identifying them? A. After receiving it, I made an affidavit which we produced here.

Q. Is that the tenor of the affidavit to authenticate the offers? A. Yes, sir.

Q. What did you do with the offers, so far as concerns Judge Barnard, after having served a copy of the offers and affidavit upon Mr. Hackett? A. I made a copy of these three offers and annexed them to the affidavit and served a copy upon Mr. Hackett, and gave him notice that I would hand those in to Justice Barnard, June 2, 1868, at 10 o'clock, A. M.

Q. What was the date when the motion had been heard? A. The motion had been heard in May.

Q. On the 30th of May? A. I think, on the 30th May; I mean the 30th May instead of June.

Q. Did you on June 2d, 1868, submit the papers including these offers to Judge Barnard? A. Yes, sir; and he received them.

Judge BARNARD:

That is not true.

The Witness :

At chambers on the 2d June, 1868 ; I handed them in.

Q. Did you personally hand them to Judge Barnard? A. Dudley Field went in with me ; I saw them handed to the Judge,—whether he handed them or myself ; I think Mr. Field handed them ; we were both there.

Q. Was Dudley Field associated as counsel with you? A. He was—Dudley Field.

Q. Did Judge Barnard decide the motion. A. Yes, sir ; I called in a number of times after that to see whether the case had been decided.

Q. Could you find any decision? A. I could not find any decision.

Q. When did you first ascertain that there had been a decision on the motion? A. On the 28th August ; I found the papers at the chambers marked “filed 28th August.”

Q. Do you mean the papers which had been used on the motion? A. Yes, sir ; on the 28th August, 1868 ; that is the first time I knew anything about it ; and a lease to Mr. Hayes was made, I think, on or about that time.

Q. That is ahead of your story ; I wish you first to tell me whether, with the papers used on the motion which you say on August 28th, 1868, you found marked “filed” as of that day, were included the additional offers and papers which you had seen handed to Judge Barnard on June 2d, 1868? A. They are.

Q. Who was in possession of the theatre property until the hearing of the motion and its decision? A. Do you mean in actual possession?

Q. Yes, sir ; I mean in actual possession? A. I always found Mr. Duff there when I came there, but Mr. Hayes had the lease of it.

Q. I mean between the hearing of the motion 30th May, 1868, and the decision of the motion by the Court on or about the 28th August 1868, who, in that interval, was in possession? A. You are speaking of the last lease?

Q. The first lease? A. I say that when I went to the theatre I found Mr. Duff generally there having charge of matters ; but I understand that Mr. Hayes had had a lease of it the year previous. The lease had been made by Mr. Duff without any authority and of his own accord.

Q. The lease terminated when? A. The first September, 1868.

Q. What was the relationship between Mr. Hayes and Mr. Duff? A. Mr. Hayes is the son-in-law of Mr. Duff.

Q. What was Judge Barnard's decision? A. I would not undertake to give the words, but in substance it directed the lease to Mr. Hayes for \$15,000 a year for three years.

Q. And was there a lease executed by Mr. Duff? A. It purported to be.

Q. Did Judge Barnard in the opinion assign any reasons for directing a lease to be made to Mr. Hayes, the son-in-law of Mr. Duff on Mr. Duff's application at \$15,000 a year when there were offers submitted at the rental of \$25,000 a year? A. That opinion is contained in this printed case that I have heretofore spoken of.

Q. Will you state whether the printed case of which you speak has been furnished by you to a committee of Bar Association? A. It has been.

Q. And that copy of the case which you gave to the Committee of the Bar Association of which you speak was the case on the appeal to the Court of Appeals? A. Yes, sir.

Q. Are the original papers of which you speak so far as they purport to be copied into that printed case correctly copied there. A. I believe they are.

Q. Who were interested in the property and in the question of rental? A. That question is settled by the decree in this printed case I have referred to. A copy of it is in there. It gives after the creditors are paid, the balance to John M. Trimble.

Q. What persons are first interested as creditors of John M. Trimble? A. Mr. Duff I believe has the first interest for anything that might be due him.

Q. You mean to the amount of \$26,000 and the accumulations upon that? A. Anything that had not been paid. He had the property nearly 8 or 10 years.

Q. The amount was largely reduced? A. Yes, sir.

Q. After the creditors of John M. Trimble, who were the parties interested in the rental which the property produced? A. The three children of John M. Trimble and John M. Trimble's wife

Q. Infant children? A. Two of them I think are. There were four girls—four girls instead of three, and Mrs. Trimble.

Q. Did these facts appear on the hearing of the motion before Judge Barnard? A. I do not know that they did, but the case will show.

Q. What was done when the order was made by Judge Barnard—was an appeal taken? A. An appeal was taken to the General Term of the Supreme Court.

Q. What happened then? A. The order made by Justice Barnard was reversed, the decision to take effect from the first of September, the premises having been kept nearly a year before this appeal could be heard, and considerable time having expired.

Q. Who represented Mr. Duff on the appeal? A. Mr. Hall.

Q. A. Oakey Hall? A. A. Oakey Hall.

Q. Did Mr. Duff oppose the appeal? A. Through counsel he did.

Q. Had he any other position in regard to the question than that of receiver of the property? A. He had been declared a trustee or mortgagee in possession.

Q. What took place after the decision at the General Term? What did the Court of Appeals do? A. The Court of Appeals dismissed it on the ground that it was not appealable. Duff then made a motion through his counsel for a re-argument at General Term, and a re-argument was granted at General Term. On the re argument it was decided that it was not appealable to the General Term.

Q. That the original order of Judge Barnard directing the lease to Hayes at \$15,000, was not appealable? A. I think that was the decision. It is contained in the printed case.

Q. That appeal was then dismissed? A. That appeal was dismissed, and it left the matter just as Judge Barnard's order left it.

Q. Who were the judges composing the General Term? A. Justices Ingraham, Barnard and Cardozo, I think, were the three—let me see. It may be that Justice Barnard could not sit then.

Q. What did you do on that decision by the General Term? A. I went to the Court of Appeals, and the Court of Appeals held that the General Term had power to hear it; that it was appealable, and they directed them to hear it, reversing the order of the General Term below. I then went before the General Term, argued it before them, and they reversed their own decision, and ordered the General Term order that had been made to stand as of that date—that is the first General Term order.

Q. Is the opinion of the Court of Appeals on the second appeal to that court of which you have spoken, reported in 41 Howard's Practice Reports, page 350? A. I think it is. I furnished it to Mr. Howard for that number.

Q. Does that complete the statement of what took place in connection with the making by Judge Barnard, of the order directing the lease to Mr. Hayes at \$15,000 a year on the first application to him? A. All that I think of now.

Q. Do you know whether or not Mr. Duff, under the lease to Mr. Hayes, acted as lessee, or what do you know on that subject?

Mr. CURTIS:

How does that affect Judge Barnard? A. I generally saw him in charge there on all occasions that I have been there. I very seldom saw Mr. Hayes about the theatre.

Q. Have you been in the habit of visiting the theatre after the granting of the order by Judge Barnard with greater or less frequency? A. Occasionally.

Q. Was a subsequent application made to Judge Barnard for leave to lease that theatre in the same suit, and if so, when was this application made? A. I have got those papers here, (after referring) about June 16th, 1871, Justice Barnard made an order on me to show cause why this property should not be rented.

Q. On whose application was the order made? A. It was on the application of John A. Duff, Receiver.

Q. In the same proceeding as that in which had been made the previous order of Judge Barnard in 1868? A. It is entitled "In the matter of the application of John A. Duff, Receiver of the Olympic Theatre, for authority to lease the same." It was a similar application to the other except that the name of the person was not mentioned to whom they wished to rent it.

Q. Was that proceeding with a view to lease the property from the expiration of the lease which had been granted to Hayes under the first order of Judge Barnard? A. It was.

Q. Who were the counsel for Mr. Duff on that application—I mean the second application? A. It was a young man from Brown, Hall & Vanderpoel's office by the name of Bookstaver.

Q. He is a member of the firm of Brown, Hall & Vanderpoel?
A. Yes, sir.

Q. Who were the Attorneys of Record upon the proceeding for the petitioner? A. Brown, Hall & Vanderpoel.

Q. Did you oppose the application of Mr. Duff and appear on the return of that order to show cause? A. I did. It was postponed until June 30th, 1871.

Q. When was that order returnable? A. The third Monday in June.

Q. Was the final decision of the Court of Appeals upon the former application, prior or subsequent to the second motion? A. Prior I think. It was prior because I have a copy of it here.

Q. What took place on the hearing of that second application?
A. I produced to the Court several affidavits in opposition, one made by Jesse N. Bolles as Receiver, another one by Daniel Dodge and the order entering the remittitur from the Court of Appeals and five offers for the property.

Q. Made by whom and at what proposed rental? A. The first offer is made by William E. Sinn of Baltimore. He says "I am willing to take a lease of the Olympic Theatre for three or five years or longer, on or about the 1st September next at a yearly rent of \$25,500 payable monthly, with security if required, to be approved of by one of the Justices of the Supreme Court." He also offers real estate security for a portion of it. There was another offer made by William F. Howe. He offers to take the property at one, three or five years and eight months—that is the balance of the lease from September, 1867, at a yearly rent of \$25,000, payable monthly with security if required, to be approved by one of the Justices of the Supreme Court and he says "in addition to paying the rent monthly I propose to put such sum as the Court may direct in the bonds of the United States in some responsible Trust Co., not exceeding \$10,000, as security for payment of the rent." Another offer was made by Lucien Barnes, the son-in-law of John M. Trimble, who has charge of the Trimble Opera House in Albany—his wife being one of the heirs. He offers \$22,000.

Mr. ANDREWS :

Allow me to ask whether these offers were accepted by Judge Barnard?

Mr. PARSONS :

No, sir, that is what we are trying to make out.

The WITNESS.

Mr. Barnes offers to take the property from the first of September at the expiration of the old lease.

Q. At what rental? A. At a yearly rental of \$22,000, payable monthly, with security if required, to be approved by a Justice of the Supreme Court.

Q. What other offers did you use on that motion? A. Josh Hart,

another theatrical man in this city, made an offer of \$25,000 payable monthly with security if required to be approved by a Justice of the Supreme Court. He offers to take it for one, three or five years and eight months from the first day of September.

Q. Was five years and eight months the unexpired term of the lease from Meinell to Trimble? A. Yes, sir. There is a right of renewal.

Q. What other offer? A. Another offer was from A. Spalding & B. C. Thayer.

By Mr. ANDREWS:

Q. That is yourself? A. Yes, sir.

Q. And the other is Judge Spalding? A. Yes, sir.

By Mr. PARSONS:

Q. Alexander Spalding is now a Judge of the Marine Court? A. Yes, sir. For one, three or five years and eight months from the first day of September following—that being the balance of the lease; at a yearly rent of \$20,000 payable monthly with security if required, to be approved by the Court. There is one other offer; Mr. Hess of Chicago offers to take it for \$22,000 for one, two, or three years or longer from the first day of September, with security to be approved as in the other cases.

Q. Are the papers from which you have made the statement of these facts, the original papers produced from the files of the County Clerk's Office and used at the hearing of the motion before Judge Barnard? A. These are the original papers (on the table,) these (in the hand,) are copies of them.

Q. Are the original papers before the Committee? A. Yes, sir; they are, and these papers are a true copy of them.

Q. The papers in your hand which you have used, are copies of the original papers which have been produced here from the files of the County Clerk's Office? A. Yes, sir.

Q. Who appeared on the hearing of that motion? A. I appeared on behalf of Mr. Bolles.

Q. And who appeared on behalf of Mr. Duff? A. I gave you his name—Mr. Bookstaver, of the firm of Brown, Hall & Vanderpoel.

Q. What did Mr. Bookstaver say to Judge Barnard with reference to the person to whom he desired the lease to be made, or on the subject of the rental? A. I do not recollect.

Q. Do you recollect that he said anything? A. I do not.

Q. When was the motion submitted to Judge Barnard? A. On June 30th, 1871.

Q. Did Judge Barnard decide the motion? A. I called at Chambers a number of times to see whether he had, and was always informed that there were no papers filed yet, until the 11th September, 1871. I found the papers there then, and I found an entry in the minutes of the Clerk at Chambers stating that they were filed then. I also found indorsed on the papers "filed September 11th, 1871," which is on there now.

Q. What was the effect of this delay in the decision of the motion upon the offers which you had submitted with your papers to Judge Barnard? A. It made the offers perfectly useless for this reason; that they were based upon the idea of the property being leased from the first of September, and if they could not get it at that time, they were not obliged to take it at all and they would not be ready to take it.

Q. Was the same the fact in reference to the delay in the decision on the first application? A. The same.

Q. Was anything said by you before Judge Barnard on the second application, with reference to the necessity for immediate action, or did the papers show any such necessity? A. The papers showed the necessity. What I said before Justice Barnard I do not recollect.

Mr. ANDREWS:

It is not material. The Judge is not supposed to decide right off because any litigant asks him.

Q. That lease was to take effect from the 1st of September? A. Yes, sir.

Mr. CURTIS:

They were not acted upon.

Q. Did not the order to show cause on which the second application was heard before Judge Barnard—the order made by Judge Barnard—stay all proceedings on the part of Jesse N. Bolles, and of his attorney, and of all persons acting under them, or either of them, in respect to the leasing of the theatre? A. It did.

Q. That was Judge Barnard's order? A. It was in the order to show cause.

Mr. PARSONS:

I desire to have entered in the minutes from the petition of John A. Duff, Receiver, verified June 15, 1871, and produced from the County Clerk's Office, being the petition upon which the second application was made to Judge Barnard, this extract:

“That from your petitioner's familiarity with dramatic and theatrical affairs, it is always absolutely necessary that the manager or the lessee of a theatre should begin to make preparations for his autumn and winter season several months before the same begins, in order that he can make the necessary contracts for furnishing and stocking the theatre, and for the employment of actors to perform therein; and hence, the necessity for an immediate action in relation to the leasing of said premises for another year or term of years.”

Q. What was the decision of Judge Barnard on this application? A. This is the decision (producing a paper).

By Mr. ANDREWS:

Q. What is its date?

Mr. PARSONS:

It is not dated at all.

By Mr. PARSONS:

Q. Is that decision in the handwriting of Judge Barnard? A. I believe it to be in Judge Barnard's handwriting.

Q. Was it filed with the motion papers which you have stated to have been filed on the 11th September, 1871? A. I found it there on that day.

Mr. ANDREWS:

It reads thus:

"In the matter of the petition of John A. Duff, Receiver, Barnard Judge. Ordered that the matters set forth in the moving and opposing papers be inquired into before Lawrence Jerome, Esq., Referee; and also as to what, if any, lease should be given; to whom; for what sum, and for what period of time, and report back with his opinion."

Q. Who continued in possession of the theatre after the lease to Hayes terminated on September 1, 1871, and who has continued in possession down to the present time? A. Either Mr. Duff himself or Mr. Hayes. That is a question. The position we take in the matter is that Mr. Duff merely uses Mr. Hayes as a figurehead, and that he is running the theatre himself. It is either one or the other.

Q. Has Mr. Hayes or Mr. Duff, if it be Mr. Duff, held over under the lease which was executed on the first application fixing the rental at \$15,000. A. They so claim. Mr. Duff so claims that he holds over.

Q. Has Mr. Jerome made any report as yet? A. Nothing has been done except entering the order. No steps have been taken on behalf of Mr. Duff nor on my part, the decision not having been made until the 11th September. I had no offers for the theatre except those I have given in evidence now. Since then Mr. Duff has done no more, except to enter the order.

Q. Was anything said by you upon the hearing of the first application before Judge Barnard in respect to what was the practice in such cases? A. I think I claimed that it ought to follow the old practice in Chancery. I think that is what I claimed.

Q. Did you submit a brief to that effect to Judge Barnard? A. I think two briefs were submitted to Judge Barnard. One by Mr. Fields, and one by myself.

Q. To that effect? A. That is my impression, but I would not swear to that positively.

Q. Do you know what was the practice of the Court of Chancery upon applications of that kind? A. I think I do.

Q. What was it? A. I think under the old system of Chancery, prior to the Code, it was the practice for a trustee to apply by petition to the Chancellor or Vice-Chancellor for leave to rent the trust estate; that on hearing of the petition the Chancellor would decide that the property should or should not be leased; and if leased, fix the term of years for which it should be rented, and then refer to a master to give notice that the property was to be rented, and receive propo-

sals ; make a lease, take the security, etc., etc., and then report it back to the Court for confirmation.

Q. Do you know what the relationship, friendship, or intimacy between Judge Barnard and Mr. Hackett or the members of the firm of Brown, Hall & Vanderpoel was? A. I have always understood that they were friendly.

Q. What has been your observation on that subject? A. So far as I have had any observotian I have come to that conclusion.

Q. Have you been in the habit of seeing Judge Barnard and Mr. Hackett frequently together? A. Oh, yes.

Q. Did Mr. Hackett attend in person upon any of these proceedings? A. I have no recollection of his ever attending in person at all, although he may have done so once. My impression is that he never did, but I would not be certain.

Q. How long was his name continued as Attorney of Record in the proceeding? A. In this first, all the way through, from beginning to end. I would generally send my papers to Brown, Hall & Vanderpoel—sometimes to Mr. Hackett, and sometimes Brown, Hall & Vanderpoel for admission of service.

Q. Do you know whether any order was made by Judge Barnard allowing compensation to Mr. Hackett in connection with this receivership. A. I do not know of any.

A. You have spoken of the offers submitted by you to Judge Barnard, on the first application, on the 2d June, 1868. Are the papers now handed to you the original papers produced from the files of the County Clerk's office? [Producing papers to witness.] A. They are.

Recess taken until evening.

EVENING SESSION.

March 15, 1872.

MR. JAY GOULD, called by the Committee, sworn. Examined by Mr. STICKNEY.

Q. Do you remember the Albany and Susquehanna litigation? A. Yes, sir.

Q. Do you remember the night of the 6th of August, 1869, when Mr. Fisk and Mr. Courter were appointed Receivers? A. I have a recollection of that.

Q. You were present, were you not, in the Treasurer's room at the Grand Opera House when the papers were prepared for that receivership? A. I cannot say whether I was or not; I remember being at the Opera House that evening, but whether I was present when the papers were prepared I cannot say: I suppose they were prepared in the legal department.

Q. Mr. Shearman has testified that they were prepared in the Treasurer's room. That was before the Erie offices were removed up town? A. Was it?

Q. So the witnesses have testified. A. I was not cognizant of the details of how the lawyers did the business; I only know that it was done.

Q. And you remember that you were present there during the evening? A. I was there during the evening.

Q. Was Mr. Fisk there? A. He was there during some portion of the time.

Q. And do you remember what time the last telegram was sent to Judge Barnard at Poughkeepsie? A. I have no recollection of any telegram.

Q. You have no recollection of any telegram whatever being sent to his address? A. I have never heard of a telegram; I never sent him one in my life.

Q. Have you heard of any telegram? A. I have no recollection of any; I never heard of any.

Q. Did you hear the fact mentioned that on that evening a telegram had been sent to Judge Barnard? A. No, sir.

Q. Are you certain upon that point? A. I have no recollection of it.

Q. Did you hear Judge Barnard's name mentioned that evening? A. I might; I have no recollection; I understood that Judge Clerke was to grant the papers, but I afterwards learned that Judge Barnard did; but how he came to do it, or how it happened I do not know; I paid very little attention to the details of that thing.

Q. Was it mentioned that Judge Clerke would probably grant the order on account of his holding Chambers at that time? A. No, not particularly that; I think because he was very friendly towards Mr. Shearman, and Mr. Shearman preferred whenever he could to go there for his orders.

Q. It was arranged, was it not, that Mr. Fisk and Mr. Courter should go on the 11 o'clock train to Albany that evening? A. I do not know anything about the details.

Q. Do you remember they did go on the 11 o'clock train that evening? A. I do not know; I was only there a little while in the evening, and just heard—that they were moving for a receivership, and I signed a bond that was prepared and went home; I did not even know what the amount of the bond was; I knew they said it was necessary to sign a bond and I signed it, and the details of the matter I paid no attention to.

Q. And did you see Mr. Sterling, when he left with Mr. Fisk, to get the order signed? A. No, sir.

Q. Did you see Judge Barnard at any time that evening? A. Not that I remember.

Q. Can you be positive whether you did or not? A. My recollection is that I did not, though I might possibly have seen him in the theatre; he came there occasionally to the theatre, and I usually went to the theatre every night; I was running all around there seeing whatever was there worth seeing, but I have no recollection of it.

Q. Do you remember whether you were at Mr. Fisk's house that evening? A. I was not; I am positive on that point.

Q. By that I mean 313 West Twenty-third Street. A. I was not there.

Q. Are you quite positive you did not see Judge Barnard in the Opera House? A. I have no recollection; I have nothing to fix my seeing him that night in my mind; I might have seen him and I might not; my best recollection would be that I did not see him.

Q. Do you remember at what time you left the Opera House yourself that evening? A. I cannot say; my habit was to leave at 9 o'clock; I usually stayed there about an hour in the theatre and then went home; my habit was to go to bed about half-past 9, and I always left at 9.

Q. Do you remember at what time you last saw Mr. Fisk on that evening? A. No, I do not; as I said a little while ago, I paid very little attention to the details of that business.

Q. Who told you that the order had been signed by Judge Barnard? A. I do not think I knew it until I saw it in the papers next morning, or the morning after.

Q. Do you remember that Fisk did go to Albany on the 11 o'clock train? A. Yes, my impression is that he did.

Q. And he went there for the purpose of taking possession of the railroad under that order. A. I suppose so.

Q. Do you remember then who told you the order had been granted? A. my recollection is, the first knowledge I had of the order, or who granted it, was by seeing it in the papers.

Q. That is your best recollection? A. That is my best recollection. I do not think I went there that night until the order was granted.

Q. Where is Mr. George B. Fowler now, or what is now his business? A. I do not know.

Q. How long since you have seen him? A. I do not remember to have seen him for a long time.

Q. In what oil company was he interested, or by what oil company was he employed? A. I think he had some interest in New Jersey somewhere.

Q. It was with an oil-tank, connected with the Erie Railway? A. He had no connection with the oil-tanks connected with the Erie Railway; I think he had an interest in an oil-refinery somewhere.

Q. In Jersey City? A. Out on the Meadows, I think; I think the refinery was there—either there or in Brooklyn.

Q. On the line of the Erie road? Yes, sir.

Q. Do you remember the name of the company? A. No.

Q. Have you seen him often? A. Yes; you mean the man with the hare-lip?

Q. I mean the man who had rooms in Mr. Fisk's house, or who lived there? A. I think so, that is the man.

Q. Where did you see him that evening? A. I do not remember that I saw him that evening.

Q. Did you not see him in the Opera House? A. Not that I remember; I have nothing to fix seeing him in my memory; I might

have seen him or I might not ; it is so long ago, and I have nothing to charge my memory with it—especially as to George Fowler, with whom I had but a passing acquaintance.

Q. Were you at 359 West Twenty-third Street that evening? A. No, sir.

Q. Did you ever meet Judge Barnard there, at 359 West Twenty-third Street?

Mr. CURTIS :

Do you mean to go into other occasions besides the 6th of August?

The CHAIRMAN :

No, I suppose not ; just at that time.

Mr. PARSONS :

There is something more than the mere fact of Judge Barnard being there on that day that we desire to prove.

Mr. ANDREWS :

It is not in the charges.

Mr. PARSONS :

Yes, in the charges ; it is material to show it.

Mr. CURTIS :

We understand the charge to be that this order appointing Fisk and Courter was signed in the house 359 West Twenty-third Street. Now even if the witness was able to say he met Judge Barnard there on another occasion it would not have a tendency to establish the fact that the order was signed there on that evening.

Mr. STICKNEY :

We understood the Committee to lay down the rule in the beginning that no objections would be allowed to be made to testimony, or arguments heard on objections. Since that time we have not made any objections, and in Judge Cardozo's case we were not met by any objections. In this case a great deal of time has been consumed by objections and arguments. I do not understand that we are bound by pleadings, and the Committee may be assured that we will not put questions that are not material. This question is very material in our view, to the precise charge mentioned in the papers.

Mr. PARSONS :

I think if the Chairman will recall the telegram of the 6th of August he will see that the testimony we seek is material.

The CHAIRMAN :

Your observation is correct as to the rule laid down by the Committee, and also, as to the difference between conducting this case and

that of the charges preferred against Judge Cardozo. If you consider this question material it will be allowed.

WITNESS :

I have no recollection to have ever met him there.

Q. Have you no recollection of having ever met him there? A. No, sir.

Q. Did you ever dine there with him and Mr. Lane? A. No, sir; I never dined there in my life.

Q. And you never saw him there in company with Mr. Fisk? A. I have no recollection of ever having seen him there; I never was there more than three or four times at the utmost—merely calling there for Mr. Fisk.

Q. Where have you seen Judge Barnard in Mr. Fisk's company? A. I did not say that I had seen him.

Q. Have you ever seen Judge Barnard in company with Mr. Fisk? A. Occasionally.

Q. Where? A. I think I have seen him at the Grand Opera House, in the theatre.

Q. And where else? A. I have no recollection of seeing him any where else except at the Grand Opera House.

Q. And in the Erie Railway office? A. Yes, sir.

Q. And at the Grand Opera House in Mr. Fisk's private box? A. I have seen him in his private box; I think I have invited him to go in myself to the box.

Q. Who else have you seen in company with Judge Barnard and Mr. Fisk? A. He was usually accompanied with two or three friends. I do not remember knowing who they were.

Q. Can you remember the names? A. Different judges and friends of his were with him; he usually had two or three friends with him.

Q. What friends? A. I think I have seen Mr. Andrews with him often.

Q. Any one else? A. Judge somebody; I have forgotten the name; Judge Jones.

By MR. CURTIS :

Q. Have you ever seen the President of the United States in Mr. Fisk's private box in the Opera House? A. Yes, sir.

Q. Did you ever meet me or see me on any occasion before this? A. Your countenance is familiar to me.

Q. Did you ever meet me, to know me, before? A. No, sir; not to know your name. I know hundreds of people that I don't know their names; I know their countenances; I have a poor memory for names, but a good memory for countenances.

Q. I wish you to explain how it came about that you and Mr. Fisk took an interest or concern in the contest, in 1869, for the control of the Susquehanna Railway Company for an election of directors—of the majority of directors? A. The only part that I took in it was this: I was waited upon by a committee of the Board of Directors,

who represented that they controlled and owned a certain amount of stock which was not a majority; that to give them a majority they required a certain amount of money advanced, some \$300,000 or \$400,000, and they wanted me to advance the money; I considered the matter and agreed to do so, and they went on and purchased the stock and I furnished the money as I had agreed; afterward the trouble grew up between these directors and Mr. Ramsay. Mr. Ramsay sought to hold the road by an issue of stock, issued at a meeting at which, as I understood, these directors were not present—an illegal issue of stock as it is treated, and it was to protect our rights that the legal proceedings were instituted.

Q. Were you at that time President of the Erie Railway Company?
A. Yes, sir.

Q. Did you consider it, on general accounts and for public and general interest, a favorable thing to have connection at that time between the Erie Railway and the Albany and Susquehanna Railroad in business matters? A. It was a connection of very great importance to the Erie Company, and there was an effort on foot (which was the real reason that induced me to advance the money), there was an effort on foot by a competing line to get control of the road, and as I said a moment ago, that was what induced me to make the advance; we only expected to get the road by virtue of the ownership of the majority of the stock.

Q. In what respect was it desirable for the interests of the Erie Railway to have a business connection with the Albany and Susquehanna Railroad? A. It opened up to the Erie Railway an outlet to Troy and Albany, and beyond there with all New England, because at Albany we connect with a system of roads which covers all New England, and are thus in direct competition with the New York Central; whereas without that road we could not compete for the New England trade except by water, which is only the Boston or shore points.

Q. Does the Erie Railway tap the coal-beds of Pennsylvania? A. Yes, sir; we have both kinds of coal, the bituminous and anthracite, and Troy is a great market for both; the iron interest there consumes a very large amount of coal of both kinds.

Q. Then the Albany and Susquehanna Railroad if brought into close business relations with the Erie Railway, would have formed a connecting link between the coal-beds of Pennsylvania and the regions north of Albany and east of Albany? A. Yes, sir.

Q. At the time of these proceedings for the placing of the Albany and Susquehanna road in the hands of a Receiver, Field & Shearman were employed as the counsel to conduct these proceedings—were they? A. I think they were employed by the directors of the company.

Q. Were they at that time the regular attorneys of the Erie Railway Company? A. Yes, sir.

Q. Who were the other standing counsel, or retained counsel of the Erie Railway at that time? A. Mr. Lane was the regular counsel—

the official counsel ; Field & Shearman did the work ; we had other counsel.

Q. What other counsel had you ? A. We had Mr. Samuel J. Tilden for one.

Q. When was he retained ? A. In 1869, if I remember right.

Q. What part of the year ? A. I think in the fore part of 1869.

Q. Who retained Mr. Tilden ? A. I did.

Q. What fee was paid to him ? A. \$10,000.

Q. What services did he render ? A. He never performed any except against us ; he turned up against us.

Q. What other counsel was employed by the Erie Railway at that time ? A. Well, sir, we had a large number ; I cannot enumerate them all.

Q. Various counsel in the city of New York ? A. Yes, sir, and along the line, Mr. Ganson, of Buffalo ; Mr. Chapman, of Binghamton ; Mr. Divens, of Elmira, and others.

Q. Do you know any special reason whatever why Judge Barnard was applied to, to grant the order for receivership, rather than any other judge ? A. No, sir ; I do not know any reason.

Q. Did you yourself give any advice in respect to the Judge who would be applied to ? A. No, sir.

Q. Had you yourself any preference about it ? A. No, sir.

Q. Do you know of any combination or concert between Mr. Fisk and Judge Barnard in regard to any part of the proceeding that was deemed necessary in order to effect the object the directors of the Albany and Susquehanna Railroad then had in view ? A. No, sir ; I do not think Judge Barnard knew anything about it ; I understood Mr. Shearman was going to Mr. Justice Clerke for the granting of these papers.

Q. And you knew nothing of any particular reason, or even any accident that led to the application to Judge Barnard ? A. There is nothing occurs to me at the moment.

By Mr. STICKNEY :

You state that your reason for advancing the money was for the interest of the Erie Railway Company ? A. Yes, sir.

Q. And that was your only reason, was it not ? A. That was the only reason.

Q. That issue of the stock which you have mentioned as illegal, when directors were not present, was the stock that was referred to as the Groesbeck stock ? A. I am not familiar with the details of this Susquehanna fight ; I have told you all the part that I had in it ; when they came down to warfare I was not in that.

Q. Was it not about 2400 or 3000 shares of stock ? A. I heard it generally stated that there was a secret issue of stock, without any action of the Board.

Q. It was stock issued before the beginning of the litigation ? A. I had been told in general terms that there had been a secret issue

of stock without any action of the Board, and without something was done at once the property would be ruined.

Q. That was stock issued before the litigation began? A. So I was told.

Q. That is all you know about it? A. That is all.

Q. You say you know of no special reason why Judge Barnard was applied to for this receivership order. Do you know of any reason why he was sent for from Poughkeepsie? A. I have nothing to fix in my mind that he was at Poughkeepsie, or in New York; I do not know that he was at Poughkeepsie; I suppose the reason was that they could not find Judge Clerke, and so went to him.

Q. And you say that you had no preference for Judge Barnard over any Judge. Do you know of any other Judge who granted any order on your side, or on the side of the Erie Railway in this litigation, except Judge Barnard? A. I do not know what orders were made in the case; I knew very little about the details of it; I was told there was a secret issue of stock, and it was necessary to have some proceedings to protect our interests; what the details were I cannot say; I was not in the habit of looking into the details.

Q. You say you knew of no concert or agreement between Judge Barnard and Mr. Fisk: Did not Mr. Fisk rather avoid applications to Judge Barnard, or having applications made to Judge Barnard for orders? A. I do not know.

Q. Were not the relations between Mr. Fisk and Judge Barnard, on the whole, rather unfriendly—I mean about this time? A. Well, I do not know; they might have been.

Q. And were not Judge Barnard's orders and decisions about this time generally adverse to Mr. Fisk and to the Erie Railway Company? A. I do not know that the Erie Railway Company had anything on hand at that time.

Q. Were they not adverse to Mr. Fisk and to your parties in that litigation? A. I do not know; the records will show; I have no personal knowledge.

By the CHAIRMAN:

Q. The time when Mr. Fisk and Mr. Courter were appointed Receivers of the Albany and Susquehanna Railway, do you recollect where Mr. Fisk was living? A. He was living in Boston, No. 22 Chester Square.

Q. Did he have any rooms in the City of New York when he stayed here—in a hotel or otherwise? A. He had rooms at one time in the Fifth Avenue Hotel, and then at the Hoffman House.

Q. Was that at the time he was appointed Receiver? A. I do not know; my habits were always to go to the Erie office and leave there about 9 o'clock, or half-past 9; the personal relations of people that came into contact with me, I never have inquired into.

Q. There was some allusion in the course of your testimony to Mr. Fisk's house. What house did you refer to? A. Mr. Fisk, the last year of his life, resided at No. 313 West Twenty-third Street.

Q. That is the place you refer to? A. Yes, that house for that reason is known as Mr. Fisk's house.

By Mr. STICKNEY :

Q. He had rooms that were fitted up at this house? A. I cannot say whether he had at that time or not; they might have been to work at the house at that time.

Q. Can you say that his rooms were not occupied by him occasionally at that time? A. I cannot say.

Q. You have no recollection on that point? A. I have no recollection; they were a long time at work at the house there, and I think the last year of his life he lived there.

By Mr. CURTIS :

Q. Have you any knowledge of how the house, No. 313, was used or occupied during the summer of 1869? A. No, sir.

Q. You do not know whether there was any furniture in it at that time or not. Did you have occasion to go into it at all? A. No, sir; I do not know but it was occupied by a private family at that time, and I do not know as it was.

By the CHAIRMAN :

Q. The house was there at that time? A. Yes, sir; I own one half of the house myself, but we had an agent that took charge of the whole property, and I never paid any attention to it.

Q. The house is still there? A. Yes, sir; it is on the block.

WILLIAM F. SHEPPARD called by the Committee; sworn. Examined by Mr. PARSONS :

Q. What is your business? A. Attorney-at-Law.

Q. How long have you practiced your profession in the City of New York? A. I was admitted attorney about ten or eleven years ago—have been in the practice of law six or seven years.

Q. Of what law firm are you a member? A. Marsh & Wallis at present.

Q. How long have you been associated with that firm? A. I have been about two years past; before that, I was two or three years or more in business by myself, and before that I was a clerk of the firm of Marsh, Coe & Wallis.

Q. Were you attorney for Mrs. Annie E. Fields in a suit for divorce, on the ground of adultery, brought by her against her husband, Thomas C. Fields? A. I was in the latter stages of the suit.

Q. Was that suit pending in the Supreme Court? A. It was.

Q. In what stage of the litigation did you become the attorney for Mrs. Fields? A. I became the attorney for Mrs. Fields after the report of the Referee was made; Judge Whiting had been attorney up to that time, and I was substituted in his place, with his consent.

Q. To what report do you refer? A. The report of Mr. Rapallo,

to whom the case was referred to take proof as to the charge on the complaint of adultery; there was no answer, and a reference was made to take proof as to the facts stated in the complaint.

Q. Was that suit defended? A. That suit was not defended, but the defendant appeared in the suit by Recorder Hackett as his attorney.

Q. John K. Hackett? A. Yes, sir.

Q. Do you remember the date of Judge Rapallo's report? A. I can give it to you in a moment.

Q. What was the date of Judge Rapallo's report? A. April 25th, 1868.

Q. Was judgment subsequently entered in that action? A. Yes, sir.

Q. And a judgment-roll made up? A. Yes, sir.

Q. Was an appeal taken from that judgment? A. Yes, sir.

Q. Upon that appeal was the judgment-roll, with the report of Mr. Rapallo and the testimony on the hearing before him, printed? A. Yes, sir.

Q. Have you a copy of the printed case? A. I have.

Q. Did you produce a copy of the judgment-roll and other papers, contained in the printed case, during the investigation of the charges against Judge Cardozo? A. There was a copy produced here and shown to me on that examination, which I identified.

Mr. PARSONS:

We desire to put in evidence as part of the testimony against Judge Barnard, the same judgment-roll and papers which were proved in the investigation of the charges against Judge Cardozo.

(Put in evidence and marked Charge 4 A, being the same document marked Charge 4 A in the exhibits and on the investigation of the charges against Judge Cardozo.)

Q. Was a motion for divorce, alimony and counsel fees made upon the coming in of Mr. Rapallo's report? A. There was a motion for divorce, and for provision or maintenance of the plaintiff, and for counsel fees, made by me as attorney on the coming in of that report.

Q. When and before what Judge did that motion come on to be heard? A. Judge Ingraham.

Q. When? A. It was heard before Judge Ingraham on June 22d, 1868; Mr. Marsh and myself appeared for the plaintiff, and Recorder Hackett and Mr. Henry Parsons appeared for defendant.

Q. What papers were submitted to Judge Ingraham on the hearing of that motion? A. On the hearing of that motion, we submitted on our part a copy of the complaint, Referee's report and testimony annexed, duly certified, copies of the order of reference, an order made amending the complaint, the affidavit of James W. Smith and a notice of motion for judgment; on the part of the defendant, there were submitted to Judge Ingraham on that motion, an affidavit of the defendant Thomas C. Fields, to the reception of which by the Judge we

objected; Judge Ingraham stated that he would receive the affidavit at that time, and if he concluded to receive it in the case, he would give us an opportunity of answering it; the papers were then submitted, with some remarks on both sides, to Judge Ingraham.

Q. Did Judge Ingraham decide the motion? A. No, sir; he did not.

Q. Was any order upon that motion made by Judge Ingraham? A. I do not think there was any order made by Judge Ingraham; I can tell you what he did in the matter.

Q. State what he did. A. The motion was argued before Judge Ingraham on June 22d, as I have stated, the question being reserved whether or not he would receive the affidavit, to which we objected, and he stating that if he concluded to receive it in this case he would give us an opportunity of answering it; on June 24 I attended at Chambers on other matters, and Judge Ingraham requested Mr. Beamish, the Clerk of the Court, to hand me some papers; he handed me the the papers which had been submitted to Judge Ingraham in this case. The affidavit to which we had objected was on the top of the bundle of papers so handed to me, and on that affidavit was written the following, in pencil, in Judge Ingraham's writing: "I think this affidavit is to be received in answer to the plaintiff's testimony, and that the plaintiff may furnish further affidavits on that subject, the case is to be submitted on June 30th with such further affidavits as the parties may produce on the subject of alimony." Judge Ingraham then verbally requested me to give notice to the other side of that direction, which of course I stated to him that I would do.

Q. What notice did you give? A. I gave written notice on June 26th to the defendant's counsel that such further affidavits as we would produce would be submitted to Judge Ingraham on June 30th, 1868, at 10 o'clock A. M.

Q. Did you attend on June 30th before Judge Ingraham? A. I did.

Q. What took place then? A. I am refreshing my memory a good deal in this matter by the printed papers used at the time; on June 30th I attended at Chambers according to the notice, and there met Mr. Henry Parsons, who had represented the defendant on several occasions; defendant's counsel I called him; I then showed him an affidavit of plaintiff's, Mrs. Fields, which I had drawn and sworn to on June 28th, and which was the only additional affidavit which I proposed to hand to the Judge; Mr. Parsons read the affidavit through; I asked him if he had anything to say to it, either to the shape of the affidavit or otherwise; he said "no;" Judge Ingraham was then holding Court; after Mr. Parsons had read the affidavit we both went to the front of the table, which was in the old Chambers in the brown stone building, and I handed the bundle of papers to the Crier and asked him to pass them to Judge Ingraham, which he did; he laid them on the table in front of Judge Ingraham; I called the attention of the Judge to the case as the one that had been argued before him a few days before, and that he directed to be submitted, and any further

affidavits that day ; Judge Ingraham said that he did not want to hold Court that day ; I stated that he directed any additional affidavits to be submitted that day, and I left the papers.

Q. With whom did you leave them ? A. I left them with Judge Ingraham as I supposed.

Q. They were handed to him ? A. They were handed to him by the Crier.

Q. And did you and Mr. Parsons then leave ? A. I turned to Mr. Parsons and said, "Judge Ingraham has the papers, and I suppose that is all we want," and we turned to leave ; I remained in the Court that day for some time in regard to another motion ; I remained quite a while ; I know that Judge Ingraham went out of the Court and announced that he was going into General Term, and he came back again into Chambers ; the motion in which I was interested going off, I went away.

Q. What was the next you heard in that case ? A. The next thing I heard in the case, I was served on July 3d, 1868, about four o'clock in the afternoon, with a notice of a proposed decree, from the defendant's attorneys—notice of settlement of a proposed decree from the defendant's attorneys, which notice was returnable on July 6, at 10 o'clock ; the 3d of July was Saturday ; the 4th was Sunday, and the 5th kept as a holiday.

Q. And what Judge did the proposed decree state as the Judge before whom the motion had been made upon which the decree was to be entered. A. There was a notice of settlement that the decree was to be presented for settlement before the Hon. George G. Barnard, at Chambers, on July 6, at 10 o'clock A. M. ; the caption of the decree recited the Hon George G. Barnard as the Justice holding the Court.

Q. Did you attend on July 6, 1868 ? A. I did.

Q. Who, if any one, attended with you ? A. Mr. L. R. Marsh attended with me.

Q. State what then occurred. A. I was somewhat surprised, I may say a great deal surprised, at receiving any notice of settlement of a decree from the defendant's attorneys, because I considered it as it was, the plaintiff's case, and I supposed that if the plaintiff did not want a divorce she need not take it ; I did not see any theory on which the defendant could compel himself to be divorced from the plaintiff for his own fault ; I was also surprised by receiving notice that the decree was to be settled before Judge Barnard, as I never heard of him in the case in any way. On the 6th of July, having no opportunity before that (as I mentioned, the next day being Sunday, and the day following celebrated as the Fourth), I went to Chambers and saw Mr. Beamish the clerk there, and asked him for these papers, if he had any in this case. Before doing that I looked carefully at the bulletin of decisions, to see if any decision of the case was published in the way that they are generally announced, and I found no entry of any decision on the bulletin. I then asked Mr. Beamish if he had any papers in this case ; he handed me the same papers that had been submitted to Justice Ingraham ; on the the back of the affidavit to

which I have referred as the additional affidavit presented to Justice Ingraham, and over the pencil indorsement of Justice Ingraham was written the following, in the handwriting of Judge Barnard, I suppose, "Plaintiff is entitled to judgment; allowance given to plaintiff's counsel of \$100; no alimony; either party may settle decree. G. G. B." Mr. Marsh and I waited in Chambers quite a while; Mr. Parsons appeared on the part of the defendant. A message came to us (I do not know by whom), asking if we would step into the private room; we declined; we were summoned to appear at Chambers and we would stay there.

Q. Who brought that message? A. I do not know.

Q. Was it some person attached to the Court? A. I do not know, sir.

Q. Was it brought by any person that you had ever seen before? A. I cannot say by whom it was brought.

Q. Did you understand the message to come from Judge Barnard? A. I had no understanding about it; the message came that the Judge would like to see us in the private room; who brought out the message or who sent it, I do not pretend to say; I do not know.

Q. Where were the Chambers of the Supreme Court held at that time? A. In the brown stone building—the old building.

Q. Where was the private room of the Judge? A. Immediately back of Chambers.

Q. With a door communicating? A. I believe there was a door from the Judge's seat.

Q. Communicating with the Judge's private room? A. Yes, sir; certainly; there was such a door.

Q. What next occurred after you refused to go to the private room? A. Judge Barnard took his seat at Chambers.

Q. Did he come from the private-room? A. Yes, sir.

Q. State what then occurred? A. I think, as I remember, that Judge Barnard was the first one to speak; I think he addressed Mr. Marsh and asked him what the trouble was, and I think Mr. Marsh stated the occasion of our being there.

Q. What did Mr. Marsh state was the occasion of your being there? A. Mr. Marsh stated that this notice of settlement of the decree had been served on him, and that he was very much surprised (I do not pretend to give his exact language at this time,) at the notice being given returnable before any Judge, except the one who had heard the motion; I know that Mr. Marsh protested very strenuously against the interference of any Judge in the case, except the one who had heard the motion originally; there was a good deal of talk about the matter, and of course a good deal of informal conversation. It was put in a good many different shapes. I remember Mr. Marsh distinctly saying that if one Judge who had not heard a case was to decide it for another, if that practice was to be established, it was well the profession should know it.

Q. Did Judge Barnard make any reply, and if so, what did he say?

A. Yes: Judge Barnard made several remarks; he stated that the

papers had been handed to him by Judge Ingraham and that he considered the matter, after the last submission, somewhat *ex parte*, and that the Judges were in the habit of assisting each other, in busy times, in such matters; I know we repudiated the idea of the matter being in any way *ex parte*. We insisted that the motion had been originally heard before him and that the fact of an additional affidavit being put in, with his permission did not take the case out of his hands.

Q. Was not Judge Barnard's decision in part of the very motion that was made? A. Judge Barnard's decision denied all provision for the plaintiff's support out of the estate of her husband; as to the question of adultery there was no dispute.

Q. Did Judge Barnard make any other remark? A. Judge Barnard stated finally that we could submit the case to Judge Ingraham the next morning, but at the same time he thought Judge Ingraham could not change his decision.

Q. Change whose decision? A. Judge Barnard's; there the matter dropped, as far as I understood, before Judge Barnard.

Q. Did Judge Barnard eventually sign the decree? A. The next morning we went up to Chambers to see if we could meet Judge Ingraham, but we found neither Judge Ingraham nor Judge Barnard, nor any one representing the defendant in Court; the next step I took in the case was to notice a motion to set aside any decision made in this case by Judge Barnard, on the ground of this irregularity, which motion was noticed on July 10th, 1868; that is the papers were served for the motion on that day.

Q. The motion to be heard on what day? A. The motion was noticed for July 20th; on the 15th of July I was served with a certified copy of the decree, in the handwriting of the defendant's attorney or counsel, certified by the clerk. It was an exact copy of the one that had been proposed to us for settlement, and which recited in the caption Judge Barnard as composing the Court of whom it was made; it was an exact copy, with one alteration, of the one on which notice had been given.

Q. Have you seen the original decree? A. I have.

Q. Was it entered on the direction of Judge Barnard? A. It was signed by Judge Barnard; I examined the original decree when I got the certified copy.

Q. What was the change which had been made in the proposed decree? A. The only change was the substitution of a counsel fee of \$300 instead of \$100.

Q. In whose handwriting was that change made? A. I have no doubt it was Judge Barnard's handwriting; it had his initials opposite the alteration.

Q. Did you see the original decree when you were examined in the case against Judge Cardozo? A. Yes, sir.

Q. And did you notice that the change was in the handwriting of Judge Barnard, with the initials written by him? A. I supposed it was Judge Barnard's handwriting; I have no doubt on the subject; I

know I never had that decree in my possession until I took it to make up the judgment-roll.

Q. What was the allowance ordered by Judge Barnard in the memorandum indorsed upon the paper when the decision was made by him? A. \$100.

Q. Had anything occurred to which you were a party in respect to the change of the allowance? A. I never made a suggestion to Judge Barnard about the case in my life, except on the occasion when we protested against the decision.

Q. Had there been any hearing of any motion upon which that decree was made before Judge Barnard? A. No, sir; not on our part.

Q. The decree states that it is made after hearing L. R. Marsh, Esq., and W. F. Sheppard, Esq., for the plaintiff, John K. Hackett, Esq., and H'y Parsons for the defendant. Had you or Mr. Marsh been heard on any such motion before Judge Barnard? A. No such motion was ever made before Judge Barnard as is recited in that decree.

Q. Was that the last of Judge Barnard's connection with the case—his signing the decree? A. I never had any motion before Judge Barnard afterwards in the case: I do not know of any motion being made before him. I know that I appealed from the decree after I had made a motion to set it aside.

Q. Did that appeal ever come on to be heard? A. No, sir.

Q. Why not? A. It was settled.

Q. By Mr. Fields? A. Yes, sir.

Q. In what way? A. He paid the plaintiff \$10,000 in a gross sum and settled the matter, instead of alimony.

By Mr. CURTIS:

Q. The decree of divorce stood? A. Certainly.

Q. And he paid his former wife \$10,000? A. Yes, sir.

By Mr. NILES:

Q. When was that payment made? A. That was made last summer sometime.

By Mr. PARSONS:

Q. Judge Barnard's decision denied alimony. A. Denied all provision for the plaintiff's support.

Q. And when the appeal was eventually taken, before it came on to be heard, Mr. Field paid \$10,000? A. Yes; the ground on which the decree was appealed from was, we were denied a provision for the plaintiff's maintenance; I did not appeal from the part that granted the divorce.

By Mr. NILES:

Q. Was that payment made in cash? A. Yes, sir; paid in a check which I received.

By Mr. PARSONS :

Q. Does the printed case, marked Charge 4 A, contain a copy of the decree signed by Judge Barnard, and of all the papers submitted to Judge Ingraham upon the motion, including the affidavit on the part of the defendant, which Judge Ingraham permitted to be made part of the motion papers, and the affidavit of the plaintiff which you submitted to Judge Ingraham, on June 30th? A. It does; what I put in when I was examined in the case against Judge Cardozo, contained the papers.

Q. Do you mean the printed case that was before the committee when you were examined as a witness in the charges against Judge Cardozo? A. That contains the papers you have mentioned.

By Mr. CURTIS :

Q. When did you first become connected with Mrs. Fields' case? A. I will give you the notice of substitution; the order of substitution was entered on the 5th of June, 1868.

Q. Who had been her attorney previous to that in this divorce suit? A. Judge James R. Whiting had been her attorney at the time I was substituted.

Q. Were you informed that an arrangement had been made between Mr. Whiting as representing Mrs. Fields, and Mr. Hackett as representing Mr. Fields, and Mrs. Fields in person that, if the adultery was proved or admitted, no alimony would be asked for? A. I was never informed of anything of the kind.

Q. Were you informed that no alimony would be asked if the adultery was proved on testimony furnished by the defendant himself? A. No, sir.

Q. Did you never understand, as the attorney for Mrs. Fields, that Mr. Fields was to furnish the proof or give the proof of the adultery and that then a decree of divorce was to be made, without asking for alimony. A. No, sir; if you want my understanding about it I will give it to you.

Q. I mean were you informed at any time? A. I was never informed of anything like that by anybody connected with the case.

Q. How did Mrs. Field expect to support her case—how did you expect to get the proof of adultery? A. I did not come into this case until the report of the Referee was made.

Q. The report of the Referee had been made and that proved the adultery, or contained the proof? A. The Referee reported that the adultery had been proved as charged.

Q. What were Mrs. Fields' circumstances at the time when this decree was made? A. I know nothing about her circumstances of my own knowledge; I will give you what I have been told by her and her family.

Q. That is pretty good knowledge? A. She told me she had \$10,000 which her father gave her—I also understood that her father was a wealthy man; that is all I know about it.

Q. Was she living with her father? A. Since her husband abandoned her she told me she had been supported by her father.

Q. Had she any children? A. My impression is not; I think not.

Q. Where did her father reside. A. Her father resided in this city, in St. Mark's Place.

Q. Was he not quite a wealthy man? A. I understood so; I have no doubt of it.

Q. Was he reported to be quite wealthy? A. I always heard that he was a rich man, and supposed so; I had no information except what I gained in regard to this case.

Q. Was Mr. Fields a man of any means at all, or, in any business at that time? A. I thought he was.

Q. What was he doing—was he doing anything? A. Well, he was at that time Corporation Attorney.

Q. Was he at that time? A. At the time of this decree he was Corporation Attorney.

Q. Do you know what the income was of his office? A. I have no personal knowledge upon the subject.

Q. Do you know what his salary was? A. No, sir.

Q. Do you know that his income and means did not exceed \$5,000 a year? A. I know nothing about it; I have been told that that is a very lucrative office, but still I do not pretend to know.

Q. Do you know whether Mr. Fields was at that time much in debt? A. I have no knowledge.

Q. Did you search for judgments against him? A. No, sir.

Q. You did not make any inquiry into his situation? A. I made no inquiry except from members of Mrs. Fields' family; I have made inquiries.

Q. What did the members of her family inform you as to his means? A. I think that is embraced in this affidavit of Mrs. Fields in the case, as near as I know anything about it.

Q. What did the members of her family inform you? A. I cannot well remember now, I embraced it at the time in an affidavit which is here; I know that her brother considered he had property.

Q. Which brother was that? A. James W. Smith.

Q. Was there another brother? A. Yes, there was another brother, I believe.

Q. Did he consult with you? A. I have no recollection of consulting with him or he with me about this case.

Q. Do you know whether he was on the side of the sister or Mr. Fields in feeling and action in this matter? A. I have forgotten his name.

Q. Wesley Smith, formerly an Alderman? A. A pretty stout man; I know that I have seen that gentleman in reference to this case, and he always spoke as if he was very much interested in his sister's welfare; probably I have only seen him two or three times, if as often as that.

Q. Did Mrs. Fields make no communication to you with respect to her situation in regard to her property or means, except that her father had given her \$10,000? A. No, sir; she told me that her father had

given her \$10,000 in bonds, I think ; had made her a present of it, and that was all she had.

Q. When did she say that? A. It was about the time that we were getting up these affidavits on the alimony question ; it was when I got up the affidavit in answer to Mr. Fields, I think.

Q. When did Mrs. Fields first communicate to you that her husband had abandoned her? A. During the progress of this litigation ; I cannot give you the exact date.

Q. When did she say he had abandoned her? A. Do you mean the date, or with regard to other circumstances?

Q. The year? A. I do not know that I can give you any year.

Q. Can you tell within two or three years? A. I see from this affidavit, that she states it was in the month of November, 1866 ; that is all my knowledge on the subject ; of course, I would have no recollection apart from this affidavit.

Q. Did she say that she had been in her father's family since, and supported by her father. A. Yes ; she states so in this affidavit that since the abandonment by her husband she resided in her father's family.

Q. Is there anything unusual, in the Supreme Court or in any other Court, in one Judge hearing a case and receiving the papers and then handing it over to another Judge to make a decree, after hearing it? A. In a litigated matter I never heard of its being done except in this case.

Q. What remained in this case to be determined ; anything but the question of whether Mrs. Fields should be allowed alimony or not? A. The only question on which there was to be any discussion was whether the defendant was to be compelled to pay for the support of his wife on the final decree.

Q. Before that final decree was made by Judge Barnard you had an opportunity, had you not, to be heard on the subject before him. A. No, sir.

Q. Why not ; were you not there in Chambers present before the decree was made. A. I was in Chambers on the return of this notice of settlement of this decree after the decision was made—if it was a decision.

Q. Before the final settlement of the decree were you not present in the Court before it was signed. A. I was present before Judge Barnard on the occasion that I have mentioned and no other.

Q. Did you ask Judge Barnard to hear any objections or argument on the subject. A. On the merits of the case.

Q. On the merits of that point. A. Whether she was entitled to any alimony.

Q. That was all that remained? A. I did not consider that anything remained before Judge Barnard.

Q. That was all that remained to be decided in this matter? A. The case had already been decided, it appeared, by Judge Barnard ; we were there simply to settle the decree.

Q. To settle the terms of the decree is to settle what it contains?

A. I suppose the decree is to carry out the decision of the Court before made.

Q. You had an opportunity to be heard on the terms of the decree had you not? A. Of course we had an opportunity to be heard if there was anything in the decree that wanted to be changed.

Q. You declined to say anything or make any appeal to Judge Barnard, or make any argument to him because the case had been heard originally by Judge Ingraham? A. I did not decline to do anything; I stated that Mr. Marsh said the case had already been heard before Judge Ingraham and we wanted Judge Ingraham's decision; in effect that was stated.

Q. Have you any reason to suppose, and can you suggest any reason why, if you had gone before Judge Ingraham to settle the terms of the decree, or to be heard in respect to it, that it would have been different from what it was by Judge Barnard? A. I am not the keeper of Judge Barnard's conscience, but I only wanted the case decided by the Judge that heard it; if you want my opinion I will give it.

Q. I ask if you have any reason to suppose that the decision of Judge Ingraham on the point would have been any different from Judge Barnard's? A. I can give you my judgment on that; that is all; I have no fact.

Q. I ask if you know of any reason? A. I know of no fact why Judge Ingraham should decide it differently.

By Mr. NILES:

Q. You are asked if you know of any reason? A. I can give you what my judgment of the matter would have been.

By Mr. CURRIS:

Q. I do not ask that. I ask if you know of any reason why Judge Ingraham should have decided differently? A. Yes, I can give what I think would be a reason.

Q. Well, state it? A. I consider it to be the legal duty of a Judge, on a final decree for divorce, to make some provision for the wife; I consider that to be imperative; it is entirely different from a case of alimony while the suit is pending, which, to a certain extent, is within the discretion of the Judge; and I suppose that Judge Ingraham would be controlled by some such views as I have stated.

Q. Do you think it the duty of a Judge in the case where the wife is rich and the husband without means, and there are no children, under all circumstances to make an allowance for the support of the wife? A. I take it to be the duty of the Court in this case.

Q. Do you consider it to be the duty of a Judge in all cases, under all circumstances, to grant some alimony? A. Not to grant alimony.

Q. To grant something for the support of the wife? A. If I had drawn that decree I would have endeavored to have avoided the word alimony; I think it is the duty of the Court, under all circumstances, in a final decree where the husband is in fault, to grant a support to the wife.

Q. Without regard to the circumstances of the husband? A. Reference must be had to the circumstances of the husband.

Q. Is it not in the discretion of the Judge entirely? A. I think not. If you question me as a lawyer, I think there is a difference between temporary alimony and a permanent provision.

Q. The next day after the case was argued before Judge Ingraham, were not these papers handed to Judge Barnard by Mr. Beamish, the Clerk, just as they had been submitted. A. I do not know what Mr. Beamish did.

Q. To whom did you give the papers on the submission of the case, after it had been argued before Judge Ingraham? A. On the first occasion do you mean, or the second occasion when we appeared before him.

Q. I mean on the occasion of the final submission to Judge Ingraham. A. I handed the papers, I think, to Mr. Skidmore, the Crier there then; I am not sure; I saw that he laid them on the desk directly in front of Judge Ingraham, and I called Judge Ingraham's attention to the matter, as I have stated.

Q. That was when Judge Ingraham was holding Chambers. A. Yes, sir.

Q. Do you know what Judge Ingraham did with those papers? A. I have no personal knowledge on the subject; I can tell what he told me he had done with them about two months ago.

Q. What did he tell you? A. He told me that he left them on the desk.

Q. Did not Judge Ingraham tell you that he handed the papers to Judge Barnard. A. No, sir; he told me he did not.

Q. At the last General Term of the Court did he not tell you that he handed them to Judge Barnard, with a request that he would examine them and make the decree? A. No, sir; I told Judge Ingraham that Judge Barnard said that he did hand them to him, and Judge Ingraham said that he did not; that he had left them on the desk, and Judge Barnard had come into Court after he had gone, and taken the papers, I suppose; I do not know whether he said that Judge Barnard had taken them or not.

Q. Where did you say that he went? A. Out of town.

Q. To Nova Scotia? A. No; I think he said he went to Saratoga.

Q. He went some distance out of town. Did he not say to you on that occasion that he turned over the case to Judge Barnard to make the decree? A. On what occasion?

Q. On the last occasion? A. No; he repudiated the idea of handing the papers to Judge Barnard; he simply said that he went out of town and left the papers there, and when I stated that Judge Barnard said that he handed him the papers, he stated that he left the papers on the desk, and that was probably what Judge Barnard meant by saying so.

By the CHAIRMAN:

Q. Were you ever before Judge Barnard in this case in any way

until after he had indorsed these words on the affidavit, "Plaintiff's entitled to judgment; allowance given to plaintiff's counsel of \$100; no alimony; either party may settle the decree. G. G. B?" A. No, sir.

Q. You were never before Judge Barnard in any way until he had decided the case? A. No, sir.

Q. Mr. Fields you say was Corporation Attorney at the time, and he is still Corporation Attorney? A. I so understood; I have no personal knowledge about that; he is reported to be.

Q. It is a public office in this city? A. It is.

Q. Have you any doubt about his being Corporation Attorney? A. I never heard of his removal.

Q. The salary of that office is very large? A. It is regulated by statute.

Q. Is it not \$15,000 a year? A. I think it is as much as that, under a recent amendment; I know that I figured it up once under the statute.

Q. Mr. Fields is a well-known politician in this city? A. I always considered him so; I never had any personal knowledge.

Q. He is the same Thomas C. Fields well known as a politician in this city? A. I have always considered him so.

By Mr. NILES:

Q. The Chairman asked you whether this Mr. Fields is the same man that is well known as a politician? A. I have always considered him to be a well known politician.

Q. You were asked whether the defendant is the same person that you have considered a well known politician? A. I can only say that I have always considered the defendant in this action a well known politician in this city.

Q. Did you ever hear of any other Thomas C. Fields? A. I have never heard of any other.

Q. Do you know whether Mr. Fields has lived in an extravagant style for a number of years? A. I have no knowledge on that subject except what I have from these papers.

By Mr. PARSONS:

Q. Did not the papers submitted to Judge Ingraham show that Mr. Fields had been living in an extravagant manner and using large sums of money? A. I consider the affidavit showed that.

By Mr. PRINCE:

Q. Did not the testimony show that he had paid \$100 a week for the board of Mary Hoag? A. I think there was some such testimony as that.

By Mr. PARSONS:

Q. Do not the papers so submitted show that prior to that time Mr. Fields had been supporting in an expensive manner the woman who is

mentioned as Mary Hoag? A. I so understood them; the papers are there.

By Mr. NILES:

Q. Were they ambiguous? A. It is my interpretation.

By Mr. PARSONS:

Q. Did not the papers state so? A. As a matter of fact I believe they did.

Q. You were asked whether there was not an opportunity for you to be heard before Judge Barnard on the occasion when you and Mr. Marsh appeared before him, upon the return of the notice to settle the decree. Had not the only open question (that of the provision for Mrs. Fields) then been passed upon so far as Judge Barnard had a right to pass upon it by the decision previously made by him? A. That had already been made and indorsed upon the papers, as I have stated.

Q. And is not the decision an absolute denial to her of any support? A. Certainly.

Q. Was there anything therefore to settle in respect to that branch of the case? A. No, sir.

By Mr. NILES:

Q. Except the language to be used in the decree in stating the decision? A. The technical form of the decree; that is all.

By Mr. PARSONS:

Q. You were asked whether you had not been informed that there had been some understanding that if Mr. Fields should acquiesce in the divorce, or should furnish the testimony by which the divorce could be obtained, no claim for support would be made by Mrs. Fields: Did any such understanding or claimed understanding appear in any of the papers submitted on that motion? A. No, sir.

Q. If the decision made by Judge Barnard was made with reference to any such understanding, must that understanding have been communicated in some other way than by the papers submitted upon that motion? A. Yes.

By Mr. NILES:

Q. Do you mean to say that it was not stated to Judge Barnard when you were there? A. There was no hearing before him, and there was nothing in the papers of that kind on which the motion was made.

Q. Was it not stated in your presence to Judge Barnard? A. Certainly not, never.

By Mr. PARSONS:

Q. Now I will proceed to another branch of inquiry. Have you appeared before Judge Barnard within the last year upon a motion for a reference in a litigated case? A. I have; probably in several.

Q. Do you remember a case where you were opposed by Mr. Stuart, of the firm of Stuart, Rich & Woodford? A. I do.

Q. What was the title of that suit? A. Platt and others against the United States Button and some other kind of company.

Q. What was the general nature of the suit? A. The suit was brought for goods sold and delivered.

Q. Were the parties all adults? A. Yes, sir; I believe so.

Q. Which side did you represent? A. I represented the defendants.

Q. Who made the motion for a Referee? A. The plaintiff.

Q. When did the motion come on to be heard? A. The motion came on in June, 1870, I think.

Q. Who appeared upon the motion? A. Mr. O. L. Stuart appeared for the plaintiff, and I appeared for the defendants.

Q. Did you oppose the motion for a reference? A. Yes sir, I opposed it; not very strenuously.

Q. What Judge was sitting at Chambers then, when it came on to be heard? A. Judge Barnard.

Q. Was there any understanding between Mr. Stuart and yourself prior to the hearing of the motion, with reference to who should be the Referee in the event of the motion for a reference being granted? A. Yes; we agreed that if the Court granted the motion to refer, we would prefer Ex-Judge Clerke.

Q. State what took place upon the motion? A. The motion was made by Mr. Stuart, and as I have stated, I opposed it to some extent; I supposed it would be granted; Judge Barnard granted the motion to refer upon the hearing. Mr. Stuart stated then that we had agreed upon Judge Clerke as a Referee. Judge Barnard stated that he would not refer it to Judge Clerke; that as long as we had invoked the interposition of the Court to find out whether the case should be referred or not, the Court must have the appointment of the Referee. I then stated to Mr. Stuart that if he would withdraw his motion for a reference I would agree to sign a consent to refer it to Judge Clerke, although before that I had refused to consent to a reference. That was done in open court, and Mr. Stuart stated to the Court that he would withdraw his motion.

Q. And in that way you got it referred to Judge Clerke? A. We afterward consented in writing to refer it to Judge Clerke.

Adjourned.

NEW YORK, March 16, 1872.

Judiciary Committee.

CHARLES H. TWEED having been duly sworn, testified as follows:

Examined by Mr. VAN COTT:

Q. Have you been connected with the office of Evarts, Southmayd & Choate from February, 1870, to the present time? A. Yes, sir; I have been an attorney in their office since May, 1868.

Q. Are you familiar with the order of events and the litigations in the three suits of John Nice *vs.* The Erie Railway Company and others, of The Erie Railway Company and others *vs.* Messrs. Heath, Raphael and others ; and in the suit of James Fisk, Jr., and Mortimer L. Earle *vs.* Heath, Raphael and others ? A. I am.

The CHAIRMAN :

Q. What period does that relate to ? A. From February, 1870, to the present time. I am familiar, of course, with those litigations.

Q. Who appeared for the defendant in the cause of Nice *vs.* The Erie Railway Company and others ? A. The firm of Evarts, Southmayd & Choate appeared for the defendants Heath and Raphael. We appeared for Robert N. Heath and Henry A. Raphael, who were defendants in that suit.

Q. Will you produce the answer or a copy of the answer in that case ? A. I produce the original answer in that case of the defendants Heath and Raphael.

[The paper above referred to was then marked "Charge three A."]

Q. Will you produce a copy of the complaint upon which that answer was put in, in the case ? A. I have a paper here, which I believe to be a copy of that complaint.

Q. Taken from the files in the office of Evarts, Southmayd & Choate ? A. It was taken from our papers, and is a document which was used by us in the conduct of the cause as a copy.

By Mr. VAN COTT :

We will have the original from the County Clerk's Office. In the meantime this can be marked for identification, and used till the original can be substituted.

[The paper was marked "Charge three B."]

Q. Did you see an injunction order made *ex parte* made by Justice Barnard in that cause, or a copy that was served ? A. I think it was a copy that was served upon us of the original injunction order, but I am not aware of having ever seen the original injunction.

Q. Will you look at the prayer of the complaint in the copy you have just handed in, in that cause, and say whether the injunction was of the tenor of the injunction there prayed for ? A. I believe it to have been ; I am not positive that it was in exact accordance with that prayer ; I am not aware of any difference.

Q. State, if you please, whether a motion was made to dissolve that injunction, if so, when, and before whom ? A. I shall have to refer to my minutes which I made. (After examining.) On the 9th of April, 1870, Evarts, Southmayd & Choate having appeared for Heath and Raphael on the day previous, gave a notice of motion to plaintiff's attorney in that suit, for the 18th of April, to dissolve that injunction.

Q. Did the motion come on to be heard, and was that the 18th of April, 1870 ? A. Yes, sir ; the motion came on to be heard on the 18th ; I think I was not present when it came on to be heard ; I after-

wards saw an order that was entered by default on that day before Mr. Justice Cardozo, I think, dissolving that injunction; that order was entered, according to my memorandum, which was taken from our register.

Q. Is that in the case of Nice—are you not mistaken? A. No, sir; that is in the cause of Nice; on the 18th of April, an order was entered by default before Mr. Justice Cardozo, dissolving the injunction; the next step that was taken was an application by Mr. Millard, plaintiff's attorney, to open that default; that was in the suit of Nice; papers to show cause why the default should not be opened were served on us; we gave our consent to Mr. Millard that the default should be opened on condition that our original motion to dissolve the injunction should be heard and disposed of on the 2d day of May; I think that was the condition.

Q. Did it afterwards come on to be heard? A. That came on to be heard on the 2d day of May; it was argued by Judge Fithian and Mr. Evarts, before Judge Cardozo, and was submitted on the 3d of May, 1870.

Q. Was the motion made on the complaint and affidavits, or on the complaint and answer? A. It was made on the complaint and affidavits; no answer had then been put in on behalf of Heath and Raphael.

R. Was that motion ever decided? A. It was not, to my knowledge; I examined the decisions of the Court in the ordinary order of our litigations, and that motion was never decided.

Mr. NILES:

Do you say that motion was argued before Judge Cardozo? A. That motion to dissolve the injunction was argued before Judge Cardozo on the 2d and 3d of May; it was submitted on the 3d of May, 1870, and has never been decided; I speak, of course, of my knowledge in regard to it; I have no knowledge of any decision, and of course, I attempted to keep myself informed whether such an order was granted.

Mr. NILES:

With that motion Judge Barnard had nothing to do? A. I have no knowledge of Judge Barnard's having any connection with that.

Q. Was there a motion afterwards made to dissolve on bill and answer? A. On the 24th of June, 1870, the answer of Heath and Rafael in that suit was put in, and on the next day we served a notice of motion for the first Monday of July upon the complaint and the answer, and perhaps also, accompanying affidavits; I can't say certainly as to that—to dissolve the injunction originally granted under date of March 1st; the motion was made for the first Monday in July; notice was given for the first Monday in July.

Q. When was the motion heard? A. The motion was heard on the 12th day of July, by Mr. Justice Brady.

Q. What order, if any, did Mr. Justice Brady make? A. On the

14th of July an order was entered by Mr. Justice Brady, modifying that injunction.

Q. And reserving the question as to the rest? A. So far as one clause of the injunction was concerned which enjoined and restrained the directors and officers of the Erie Railway Company from opening the transfer books of that company until the judgment in that action. That portion of the injunction was vacated by Mr. Justice Brady, on the 14th of July, and he reserved for further consideration the question as to whether the rest of the injunction should be vacated or what disposition should be made of it. On the 3d of August, 1870, an order was entered at the direction of Mr. Justice Brady, dissolving this injunction entirely.

Q. Has the plaintiff in this suit ever noticed it for trial? A. It has never been noticed for trial.

Q. No proceeding has been taken on the part of the plaintiff since the order dissolving the injunction? A. I am not aware of any step being taken by the plaintiff. I have not examined my register with special reference to that. I am not aware of any such step, and I believe that no such step has been taken.

Q. Do you know who John Nice, the plaintiff in this suit was? A. I don't know him; I never saw him; I have no knowledge of him whatever.

Q. Do you know whether any inquiries were instituted to ascertain who he was? Yes, sir; inquiries were set on foot to discover who the plaintiff was.

Q. And with what result? A. We were informed he was a lawyer, from Pennsylvania—an obscure man, from the vicinity of Goldsboro, I think. That was the information that I received in regard to the matter—the statements that were made to me.

Q. I will ask you whether there were any further proceedings in the case of Nice, other than those you have mentioned; if so, what they were? A. There were intermediate proceedings between the granting of the first injunction and its dissolution—do you wish me to state those.

Q. If you please? A. On the 13th of June, 1870, upon an affidavit of Mr. Mortimer L. Earle and of Mr. Millard, who was the plaintiff's attorney; those were, I think, the only papers which were served upon the order to show cause. The order to show cause was made by Mr. Justice Barnard why the defendant should not be punished for contempt.

Q. Which defendants? A. I think it was general—why the defendants should not be punished for contempt—for contempt arising out of the allegation that certain stock of the Erie Railway Company had been sent to the office of that company by direction of the defendants, Heath and Raphael, for transfer, contrary, as was alleged, to the injunction order of March 1st, and also why an injunction should not issue injoining the defendants, Heath and Raphael, and the Erie Railway Company from transferring the stock, which was alleged to have been left by the direction of Heath and Raphael with the clerk of

the Erie Railway Company, and why they should not be enjoined and restrained from taking, removing, interfering or intermeddling with any of that stock. I state the contents of this from my recollection—and also in regard to the enjoining of the defendants from transferring, taking away, or removing, or meddling with that stock in any way. This was the stock that was alleged to have been left at the Erie Railway office, in 1870.

Q. For transfer? A. For transfer.

Q. What became of that? A. On the 20th of June, the contempt proceeding was waived by Mr. Millard, the plaintiff's attorney, and the hearing of the remainder of the order to show cause, was set down by consent for the 22d of June, 1870. On the 22d of June, 1870, an order was entered by Mr. Justice Barnard, denying the application for a further injunction according to notice, and dissolving the injunction and restraint, which was contained in the order to show cause.

Q. That is the restraint in the order which you have just mentioned, of what date? A. June 13th, that is to say, on the 22d of June, 1870, the contempt proceedings having been waived on the 20th, the application for a further injunction.

Q. To enlarge the injunction? A. To enlarge the injunction of March 1st. The restraint and temporary injunction contained in the order to show cause, was vacated.

Q. The injunction order of March then was left to stand? A. The injunction order of March 1st, was then left in force.

Q. That was the 22d of June, you say, 1870? A. The 22d of June, 1870.

Q. Was the Mortimer L. Earle, who made the affidavit on that motion, one of the plaintiff's in the third action to which you have referred—James Fisk, Jr., and Mortimer L. Earle *vs.* Heath and others? A. I had no knowledge of Mortimer L. Earle at all. The names are identical. Mortimer L. Earle made the affidavit upon which this order was procured, and Mortimer L. Earle appears as plaintiff in the Fisk suit, *vs.* Heath and Raphael. I have no knowledge of the person whatever.

Q. Will you look at the printed paper shown you and state whether that is a copy of the complaint in the Erie Railway Company, James Fisk, Jr., and Justin D. White, *vs.* Heath and others, of which you have spoken? A. That is a copy of the summons and of the amended complaint in that suit, which was delivered to us by Lowe, Clark & Morgan, the plaintiff's attorneys, as a copy.

[It was marked "Charge 3 C."]

Q. Will you look at the paper shown you partly printed and partly in manuscript, entitled in the last mentioned cause, and state whether it is a copy of the order made *ex parte* by Mr. Justice Barnard in that cause on the 22d and 23d of June, 1870? A. I believe them to be so. We have certified copies of those *ex parte* orders at our office, and I had charge of the printing of this copy and of the preparation of the other, and I presume them to be copies of those orders.

Q. Will you state whether that action was transferred to the United States Circuit Court of the Southern District, and if so, when? (The order of June 23d, 1870, was here marked "Charge 3 D," and June 24th, 1870, "Charge 3 E.") A. On the 10th of September, 1870, Evarts, Southmayd and Choate appeared in the action of the Erie Railway Company, Fisk and White, *vs.* Heath and others, on behalf of Robert N. Heath and Henry Raphael, two of the defendants in that suit, and simultaneously with putting in that appearance, they filed on behalf of those defendants a petition for removal to the United States Circuit Court, and a bond upon such removal.

Q. Were any further proceedings thereafter had in that action in the Supreme Court? A. Yes, sir; there was either an order to show cause or a notice of motion for an order removing the case to the United States Circuit Court, and that was about simultaneous, if not simultaneous, with the appearance on the 10th of September, 1870. That motion came on before Mr. Justice Ingraham, and an order was entered accepting our surety and directing the removal of the cause to the United States Circuit Court, so far as the defendants Heath and Raphael were concerned.

Q. Was there any further proceeding as to these defendants in the Supreme Court after that order? A. Nothing, except an appeal from that order of Judge Ingraham's, which was taken by the plaintiff's attorney, by the service of notice of appeal, but nothing was ever afterwards done in regard to it. The transfer to the United States Circuit Court was completed on the 17th of October of the same year, by the filing of the proper papers in the Clerk's office of the Circuit Court of the United States. That transfer related to the defendants Robert N. Heath and Henry A. Raphael, for whom alone we had appeared in that suit.

Q. Was any motion made in the cause in the United States Circuit Court, to dissolve or vacate the injunction order, and the order appointing James H. Coleman Receiver of the stock that had been left at the Erie Railway office? A. On the 27th of January, 1871, we served a notice of motion to be heard in the United States Circuit Court on the 4th of February, 1871, for an order dissolving the injunction and receivership which were contained in the orders of the 23d and 24th of June, 1870.

Q. Was the motion heard pursuant to that notice? A. There were divers adjournments from time to time and the motion came on finally, to be heard on the 11th of March, 1871. On the 11th of March, 1871, the motion was set down for hearing at 11 o'clock. At about ten minutes before 11, the plaintiff's attorneys sent to us a notice that they discontinued that suit and that they tendered to us the costs of the suit, to which a reply was instantly made, that their pretended discontinuance amounted to nothing, and that it would be disregarded, and we should call up and dispose of the motion to dissolve the injunction and the receivership on that day. On the same day at a few minutes after 11 we attended in the Circuit Court before Mr.

Justice Blatchford. Mr. Morgan, one of the attorneys for the plaintiff in that cause, came into Court and said that he had served upon us a notice of the discontinuance of that suit, and that the suit had been discontinued, and was dead. We insisted upon proceeding with our motion. Mr. Justice Blatchford stated that the notice that had been served upon us was waste paper, or words of similar purport, and an order was made by him on the 11th of March, 1871, the effect of which was to vacate the injunction and the receivership, and during the receivership to retransfer under the direction of Kenneth C. White, as Master in the United States Circuit Court, the 60,056 shares, which had been taken possession of by him under the order of June 23d, 24th.

Q. Is that a copy of the order made by Judge Blatchford (handing paper to witness)? A. That is a copy of Judge Blatchford's order—the order of March 11th. (The above paper was marked “Charge 3 F.”)

Q. I will ask you in general terms whether that order made by Judge Blatchford was submitted to, and whether the stock referred to in it was finally transferred by Coleman, Receiver, to Messrs. Heath & Rafeal, or their representatives? A. Well, these 60,056 shares of the Erie stock were afterwards re-transferred under that order of Mr. Justice Blatchford, as made more explicit by one or two more subsequent orders of his, to the defendants, Heath & Raphael, and the stock certificates were delivered to Mr. Swan, their attorney—I don't want to be misunderstood—not the original identical shares of stock, but the certificates representing 60,056 shares of stock of the Erie Railway Company, part common and part preferred stock.

The CHAIRMAN:

It was the same number of shares taken by the Receiver. A. The same number of shares that Mr. Coleman had taken under the receivership.

The CHAIRMAN:

And divided into common and preferred, as those which he had taken? A. Yes, sir; as those were.

By Mr. VAN COTT:

Q. You say the number of shares called for by the order was transferred by Mr. Coleman, the Receiver, to the attorney in fact of Heath and Raphael. Do you know what became of the original stock that the Receiver had taken into his possession in that case? A. Yes, sir; that was afterwards produced. The original certificates of stock which were left on the 4th of June, at the Erie office, and was afterwards taken possession of by Mr. Coleman under the receivership of the orders of June 23d and 24th, were produced before Mr. White in the investigation that was carried on for the purpose of carrying out the order of March 11th, 1871. They were produced by the officers and clerks of the Erie Railway Company and were found to have been can-

celled by the cutting out, with a die, the names of the officers of the Company, so that the validity of the original certificates had been destroyed.

Q. The certificates issued in place of those thus cancelled by Mr. Coleman, Receiver—what had become of them? or I will modify that question. The certificates issued in place of the certificates thus cancelled—to whom had they been issued? A. Well, there was a partial duplication in this way, as appeared upon that examination before Mr. White; the original certificates for 60,056 shares had been taken possession of by Mr. Coleman under these orders of the 23d and the 24th of June, and had been kept by him in the Safe Deposit Company, and had finally been surrendered or re-delivered to the Erie Railway Company early in September, 1870, according to my best recollection. I should say within the first week of September, 1870; and there were issued to him upon that surrender two certificates, one for 60,027 shares of common stock, and the other for twenty-nine shares of preferred stock, according to my recollection, making up the whole amount of 60,056 shares. Upon the examination before Mr. White, it appeared that in addition to the cancellation of the names of the officers of the Erie Railway Company, attached to the original certificates of stock left on the 4th of June, that a round hole had also been punched in through those original certificates. I would say a portion of those original certificates. The certificates for about 30,000 of those shares, which was found to be the mark of the Farmers' Loan and Trust Company, by which it cancelled certificates, when new certificates of stock were certified and registered by them upon the basis of cancellation of old stock. The two certificates of stock, the 60,027 and the twenty-nine shares, each had not been registered when originally produced by him before the master.

Q. This other stock had been registered by the Farmers' Loan and Trust Company in place of that cancelled? A. Yes, sir.

Q. In whose name? A. From the 28th of December, 1870, to about the middle of January, 1871, it appeared by the books of the Farmers' Loan and Trust Company, which were produced under subpoena before the Master, Mr. White, that certain other 30,000 stock had been registered and certified by them upon the basis of the cancellation by them of the certificates for thirty thousand original shares which had been taken possession of by Mr. Coleman under the orders of June 23d and 24th. Do you ask in whose name?

Q. Yes, sir. The new certificates for thirty thousand shares which had been registered and certified by the Farmers' Loan and Trust Company, were in the names of De Forest, Willard and Co., E. K. Willard, William Heath & Co., Willard, Martin & Batche, I think; I am not certain that any was in the name of E. K. Willard individually.

Q. Do you mean that different portions of the thirty thousand shares were registered in the names of those several persons you have mentioned? A. Different portions of the thirty thousand shares had been registered in the names of these various brokers' firms.

Q. The Heath that you have mentioned as one of the names is not the defendant in the suit? A. A very different man.

Q. But a member of a firm? A. William Heath is the man.

Q. Who is the Martin you have mentioned, of what firm is he? A. Willard, Martin and Batche appeared upon that examination to be the successors of the old firm, Smith, Gould, Martin & Co.; I don't know the name of Mr. Martin; I forget it.

Q. And wasn't the Mr. Willard you have mentioned formerly a member of E. K. Willard & Co., brokers? A. That I don't know; I think he was.

Q. Will you state whether Mr. Gould had any connection with the new firm of Willard, Martin & Batche, whose names appear on the substituted registry? A. I think it appeared on examination before the Master, that Mr. Gould was a special partner of the firm of Willard, Martin & Batche, together with William M. Tweed and Henry M. Smith, I think. I think those were the three special partners in that firm.

Q. After this cancellation of thirty thousand shares received by Mr. Coleman as Receiver, had those cancelled shares of stock any value in this market? A. It was testified by brokers on that examination that they were worthless and also by the President of the Farmers' Loan and Trust Company, and by every one who was examined on the subject.

Q. They were not negotiable after that? A. No, sir; they had been entirely cancelled, as I understand the process.

Q. Then, sir, as to the new certificates for 60,056 shares issued to Mr. Coleman, Receiver, to what extent had they value in the market? A. Well, there were two certificates issued to him, one for 60,027 common, and the other for twenty-nine preferred; it appeared on examination that neither of those had been registered with the Farmers' Loan and Trust Company, and it appeared also on the examination that stock which had not been so registered by the Loan and Trust Company, was not, under the regulations of the New York Stock Exchange, a good delivery of Erie stock; that fact was also testified to by the witnesses.

Q. I would ask you if you know how it was possible to register any part of the sixty thousand shares from which the thirty thousand had been taken and registered in other names? A. I don't understand your question, sir.

Q. Was it possible to obtain a registry in the Farmers' Loan and Trust Company for sixty thousand shares, or thereabout, or any part of them, thirty thousand shares thereby represented, having been already registered in the names of other parties? A. Well, sir, I will state just what I understand in regard to that fact, as developed in the examination before the Master. The original certificates for sixty thousand and fifty-six shares of stock, which were taken possession of by Mr. Coleman under these orders, appeared upon the books of the Farmers' Loan and Trust Company as registerable stock; that is to say

it appeared upon their book, that the certificate bearing the numbers of those certificates, and for the number of shares represented by those certificates were outstanding certificates of stock on the Erie Company, which were entitled to registry, and which upon production to the Farmers' Loan and Trust Company were entitled to be certified by them on their face as registered stock of the Erie Railway Company. Now, in December, 1870, and in January, 1871, a new issue of thirty thousand shares of the Erie stock as testified, was made, which of course, being a new issue, had no place upon the registry of Erie stock, which was kept by the Farmers' Loan and Trust Company. It appeared that that new issue of thirty thousand shares, which were a part of the certificates taken possession of by Mr. Coleman under those orders, were sent down to the Loan and Trust Company, not in one parcel but in several parcels, and that the new issue of stock was registered and certified by the Farmers' Loan and Trust Company, as upon a cancellation and surrender of the old certificates for the thirty thousand shares, which were a part of the stock taken possession of by Mr. Coleman. The registering power then, of that thirty thousand shares, had been taken away, and they could not, as testified to by the President of the Farmers' Loan and Trust Company, according to my recollection, be made a basis for the registry of any other stock of the Erie Railway Company. He testified, according to my recollection, that if Mr. Coleman produced his new certificates, one for 60,027 shares, and the other for twenty-nine shares—that if he produced them together with all the old certificates which had originally come to Coleman's hand as Receiver, he would be entitled to have certified by the Trust Company the certificate for twenty-nine shares of preferred, and to have his certificate for 60,027 common, certified to by the Loan and Trust Company, as being good for the amount of thirty thousand and twenty-seven shares only; that is to say, that if he had produced all the old certificates, which he had originally.

Q. For 60,056 shares? A. Yes, sir; in the condition they were found to be at the time of the examination before the Master, and had also produced to him the two certificates, one for 60,027 and the other for twenty-nine shares, that he would have been entitled to have his preferred stock registered and certified for twenty-nine shares, and his new certificate of common registered for 30,027 only.

Q. Did it appear, sir; who had the thirty-thousand shares that had been surrendered for cancellation? A. Mr. Gould said he had bought them.

Q. The original thirty thousand? Do you mean the original thirty thousand? A. Yes, sir; the certificates in their mutilated form for the original thirty thousand, appeared there before the Master—the new certificates of the thirty thousand shares that were registered and certified upon the basis of the cancellation of the old thirty thousand which I have spoken of before, were testified to by Mr. Gould as having been purchased by him from the Erie Railway Company.

Q. My question related to the thirty thousand original English Erie

certificates that had been surrendered and cancelled. Who had caused those to be cancelled? Did that appear? A. This appeared, according to my recollection, that Mr. Coleman left them with the Erie Company when he took his two new certificates, and that afterwards in December, 1870, and January, 1871, Mr. J. Gould directed their transfer clerk to take certificates for thirty thousand shares of the receivership stock, I believe it was called—in the examination of this transfer clerk—to the Farmers' Loan and Trust Company, and to have his new issues certified upon its surrender.

Q. I call your attention now, sir, to the suit of James Fisk, Jr., and Mortimer L. Earle *vs.* Heath and others. Will you look at the papers shown you and say whether that is a copy of the complaint in that case? A. I believe it to be. It was a copy which was handed to us by Lowe, Clark and Morgan, attorneys for the plaintiff in this cause. I think this is not the copy that was originally served.

Q. But it is a copy? A. On the 11th of March, 1871, in returning from the United States Circuit Court, to my recollection, Mr. John Swan was served with a copy of the summons and complaint and of the order for a receivership in this cause. That copy I think was put in the files of the United States Circuit Court, but this is a copy which was procured by us from the plaintiff's attorneys. (The above paper was marked "Charge 3. G.")

Q. Will you look at the printed order shown you, the caption being February 28th, 1871, the date at the foot March 3d, 1871, marked "Injunction, filed March 10th, 1871, signed "G. G. Barnard, J. S. C.," and state whether that is a copy of the *ex parte* injunction order made by Judge Barnard in that case? A. This is not an injunction order, Mr. Van Cott.

Q. No—I see it is an order for a receivership. It is an *ex parte* order appointing Chas. Robinson Receiver? (Paper marked "Charge 3, E. E.") A. Yes, sir; this is, I believe, a copy of that order.

Q. When was that order served? A. According to my recollection, it was served upon Mr. Swan, who is one of the defendants in the Fisk suit against Heath, very soon after he came out of the United States Circuit Court, after the making of the order of March 11, which I have testified about.

Q. And on the same day? A. It was on the same day.

Q. And after Judge Blatchford had made that order? A. I think that on my return to the office, I found Mr. Swan there, with the papers in this new suit.

Q. Do you know who Charles Robinson was? A. I think he has been pointed out to me, in Court. I do not know him.

Q. Do you know where he lives? A. I have been told that he lives at Poughkeepsie, or in its vicinity.

Q. Did you learn what his occupation was? I have been informed that he was a dealer in horses. When this receivership was made, I took pains to find out who this Robinson was, and that was the information that I received; I know nothing personally about him.

Q. Mr. Coleman, as Receiver of the United States Circuit Court, held on to the stock, and did not transfer it to Robinson, I suppose? A. So far as I know, and as appeared by the books of the company, it was never transferred to Robinson.

Q. Robinson never got possession of it? A. I think he never got any of it; I have no knowledge of his ever having received any.

Q. Was any proceeding taken, after Mr. Coleman had transferred the stock to Heath and Raphael under the order of Judge Blatchford, to fix the compensation of Coleman, as Receiver of that stock; if so, state what you know on that subject? A. We were served with an order, to show cause, about the 25th of October, 1871, made by Mr. Justice Barnard, before him, why the Receiver should not be discharged, his bond cancelled, and his fees taxed under law. We were not in that Court, inasmuch as the cause had already been removed, as to the only defendants for whom we appeared, into the United States Court. I attended before Mr. Justice Barnard, and at a later time I think Mr. Southmayd and myself attended. I stated that we did not appear there, but we were mere bystanders, as our cause was in the United States Circuit Court. It was removed as to Robert N. Heath and Henry A. Raphael.

By Mr. TILDEN:

Q. Who were the other parties? A. The other parties were John Bridgeman, Heath, Charles Burt and a great many others. They were all foreigners, with the exception of two or three officers of the Erie Railway Company, who were joined as party defendant.

Mr. TILDEN:

The cause was removed under the Act of '89? A. We removed the cause under the Act of '89 and also under the Act of '66, according to my recollection; under the Act of '66, we filed our petition on the ground that certain of the defendants, who were entitled to the removal, and the cause being such a one that could be disposed of.

Mr. TILDEN: (Interrupting.)

And capable of being separated? A. Yes, sir; we filed our papers and petitions under the Act of '89, and also under the Act of '66, according to my recollection, and upon the argument before Judge Ingraham, the proceedings under the Act of '89 were practically waived, and the removal was finally made by him, under the Act of '66; it was a removal as to those two defendants.

Q. Did Judge Barnard make an order, fixing the Receiver's allowance? A. Well, sir, I would rather that the order speak for itself; according to my recollection, it was this: The order, taxed the allowance of the Receiver at \$21,760.30, being one and a quarter per cent. of the present value of the stock, and directing that that taxing or adjustment of the allowance of the Receiver should be certified to the United States Court for its final order thereon; there was also in the order a provision of \$2,500 each to Mr. Clarence Seward and to Mr. T. C. Buckley, as counsel to the Receiver; and it was then pro-

vided that that order should be certified to the United States Circuit Court.

Examination by Mr. CURTIS:

Q. This order, fixing the Receiver's allowance was a mere certificate to the United States Circuit Court, by Mr. Justice Barnard, that that was a proper allowance; it was not a positive order that that amount should be paid, operating in the cause? A. I think it was not an operative order, directing a payment; the order ought to speak for itself; I can furnish you with a copy of the order which was afterwards served upon us by the counsel for the Receiver, but, according to my recollection, the phraseology used that the allowance is taxed at so much, being one and one-quarter per cent., and that there was then a direction that that adjustment should be certified for its information to the United States Circuit Court; that is my recollection of the order.

Q. Was it on condition inserted that if the Judge of the United States Circuit Court thought it proper? A. I speak of my recollection, that the contemplation of the order was this, that in taxing it at so much, there was no explicit direction; so far as I recollect, to pay, except so much as might follow from the taxing of the allowance, at a certain sum; then there was a direction that it should be certified; that is my recollection about it.

Q. Do you recollect of a proviso in the order—wasn't there a proviso to this effect: That if the cause had remained in the State Court, that would have been the allowance given, but that the whole matter was submitted to the Circuit Court of the United States? A. Certainly; the contemplation of that order was that the matter was to be submitted to the Circuit Court of the United States, and that is my recollection of the order; my testimony in regard to it, would not be as good as the order itself.

[The order of February 28th, appointing Robinson, Receiver, was marked Charge H.]

JAMES H. COLEMAN being recalled, testified as follows: Examined by Mr. VAN COTT:

Q. Have you the order in the case of the Erie Railway Company and others, appointing you Receiver of 16,506 shares of stock of the Erie Railway Company? A. Sixty thousand.

Q. Yes—I mean 60,056 shares of stock? A. No, sir.

Q. Do you remember when that order was delivered to you? A. I cannot, without refreshing my recollection.

Q. The date of the order was the 23d of June, 1870? A. Well, it was handed to me some time about that date—the day of its date.

Q. Do you recollect when you executed the Receiver's bond in that case? A. I do not recollect the day.

Q. How soon after you received the order was it executed? A. I think it was very soon thereafter.

Q. Who were your sureties on that bond? A. Mr. Terrence Farley, Mr. John J. Bradley, and Mr. James M. Sweeney.

Q. Did you apply to them after you received the order, to become your bondsmen, or had they been procured to be your bondsmen by the parties? A. I procured the bondsmen myself. The bond, if I recollect right, was prepared by Mr. Morgan; I applied to Mr. Farley in person. He consented to become my surety; I applied to Mr. John J. Bradley, who was formerly a client of mine, and a personal friend, and also to Mr. Sweeney, and they at my request went on the bond.

Q. What relation is Bradley to Sweeney? A. I believe he is the brother-in-law of Sweeney.

Q. What did you do after filing your bond, in that cause, under the order, in respect to taking possession of the stock? A. I proceeded to the office of the Erie Railway Company, I think on the day of the filing of the bond. I found, I think, there, James Fisk, Jr.; I made a demand on him for the stock of which I was appointed the Receiver. The stock was not delivered to me that day. Some person, who had the charge and management of the matter, was out of town. My present recollection is, that the demand was made by me on a Saturday, and I think I again visited the office of the Erie Railway Company on the following Monday, when, I think, the stock was delivered to me; at all events I minuted on the order appointing me, in pencil, the steps taken by me in the matter.

Q. According to your best recollection, what person delivered it to you? A. Well, I positively can't recollect now who delivered the stock to me. I know the stock was taken out; I know it was counted; my recollection is, that Mr. Otis was in there some time during the counting, although on a previous occasion, he has denied that, and said I was mistaken. I think Mr. William A. Harris or Harrison.

Q. It is Harris? A. —was present, and I think one other person, —Mr. James O'Connor Tabb, accompanied me there, and was with me, if I recollect right, when the stock was delivered to me.

Q. It was delivered to you at the Erie office? A. Yes, sir; and was counted there. I gave a receipt for the stock. Mr. Tweed, in the office of Evarts, Southmayd and Choate, has the original receipt; I believe, I loaned them the original receipt.

Q. What was the date of that delivery? A. Well, I can't positively testify now, from recollection. I had the receipt here, I think.

Q. Was it within a few days after the order appointing you? A. The stock was delivered to me on the day of the date of that receipt.

Q. What did you do with it? A. I brought it sir, to the Safe Deposit Company, corner of Liberty and Broadway, I think.

Q. How long was it kept there? A. It was kept there, until some time in December.

Q. What did you then do with it? A. I brought the certificate to the office of the Erie Railway Company, for the purpose of causing the stock to be transferred to me, as the Receiver.

Q. Did you apply to the Erie Company for a transfer to you, at that time? A. Yes, sir.

Q. To what person? A. I don't recollect now; I think I made the application to Mr. Gould.

Q. Who was president of the Erie road, at that time? A. I think he was.

Q. Do you remember who the transfer clerk was? A. No, I don't.

Q. Do you remember how you signed your name, in making the transfer? A. Yes, sir.

Q. I want you to give me the form, as near as you can, of the transfer? A. I signed my name on the certificate book, presented to me by the clerk in charge, as Receiver—"James H. Coleman, Receiver."

Q. Transferring the stock to whom? A. Myself, I think; I supposed that was the result to be accomplished.

Mr. TILDEN:

Was the power of attorney in blank? A. I don't recollect.

Mr. TILDEN:

On the back of the certificate? A. I don't recollect.

Mr. VAN COTT:

Q. Do you remember, Mr. Coleman, that the transfer on the back of those certificates was filled in with the names of Heath and Raphael? A. I do not, sir.

Mr. TILDEN:

Was that the assignment, or the power?

Mr. VAN COTT:

It was the assignment.

Mr. PARSONS:

It was the assignment on the back.

Mr. VAN COTT:

Q. Was there an assignment on the back of the certificates to Heath and Raphael? A. That I don't remember.

Q. Didn't it appear on the certificates that Heath and Raphael were the then holders of the certificates. A. I don't recollect.

Q. And you think that the form of the transfer, was a transfer by yourself, as Receiver to yourself, as Receiver? A. I think so, sir.

Q. That would not effect very much, would it? A. I suppose the transfer was legally made to me; I made application to have steps taken, to have the stock transferred to me, and by the order, I was directed to cause, or to have the stock transferred to me. The transfer book, when I first called was not ready. They got the book ready for the transfer of the stock and I signed, believing it to be right, and believing that the stock was transferred to me by signing the document, whatever it was, presented to me there.

Q. Did you leave the original certificate there? A. Yes, sir.

Q. And received new certificates? A. And received two certificates.

Q. Mention the amounts, please? A. One certificate represented sixty thousand and odd shares of common stock, and the other represented, I think, twenty-nine shares of preferred stock.

Q. What did you do with the new certificates you received in place of the old? A. I brought them to my office, and put them in the safe; I am not positive whether I brought the new certificates back to the Safe Deposit Company or not; I either brought the certificates there, or put them in my own safe.

Q. Were those certificates in your possession from the time you received them from the Erie Railway Company's office, or with the Safe Deposit Company, under your key, during that time, until you finally, under the order of Judge Blatchford, delivered them to Heath and Raphael. A. The last certificates.

Q. Yes, sir? A. they were never out of my possession, except, perhaps, for a moment of time, or when in the possession of Mr. Seward, and I think they were also inspected by my counsel, Mr. Willard O. Bartlett.

Q. Why didn't you have the new certificates issued to you, registered? A. Well, to tell the truth, I didn't think it was necessary; I wasn't aware it was necessary to have them registered in order to make my shares valid. I did not propose to use it. I supposed the stock was validly transferred to me, that I was the owner of it as Receiver, and would be responsible to the Court for my duty as Receiver, but I didn't suppose it would be necessary to register the stock. I had never dealt in stock matters, and was never connected in any stock transactions.

Q. You had had no experience in such matters when you were appointed Receiver of that stock, had you? A. No experience of that kind.

Q. At all? A. Not that I remember.

Q. You afterwards discovered a very serious complication about the title of that stock, which would have been avoided if you had registered it, didn't you? A. I am entirely conscious of that fact. It caused me a good deal of annoyance and trouble, and a good deal of anxiety.

Q. Did you bring any suit, Mr. Coleman, in relation to that stock as Receiver? A. I don't recollect of bringing any suit.

Q. Were you defendant in any suit as Receiver of that stock, except the suit in which Judge Barnard made an order, appointing Mr. Robinson Receiver. A. I recollect of being defendant in one suit where Mr. Robinson was appointed Receiver. I don't recall any other suit.

Q. You say you do remember one? A. I remember a suit where I think I was sued, and summons and complaint served on me, and I think Charles Robinson was appointed Receiver.

Q. Was appointed Receiver, by the order? A. Yes, sir.

Q. Did you put in an answer, in that suit? A. I think not.

Q. Had any proceeding been taken to obtain leave of the Court, to sue you as Receiver of the stock, to your knowledge? A. Not to my knowledge.

Q. Did you take any proceeding to punish for contempt, the party who had sued you, as Receiver, without the leave of the Court? A. No, sir.

Q. Was anything done in that suit, in which Mr. Robinson was appointed Receiver, to bring the case to trial? A. Not that I am aware of.

Q. Did you ever put in an appearance in that suit? A. No, sir.

Q. You did not recognize the validity of the order, by transferring the stock to Mr. Robinson? A. No, sir; I declined to deliver up the stock; I regarded myself as the officer of two Courts, amenable to the Circuit Court of the United States and to the State Court as well.

Q. From the time of the transfer to the United States Court, you regarded yourself Receiver in that Court? A. I regarded myself, as Receiver in both Courts.

Q. Now, I will ask you who Mr. Robinson is? A. Well—Mr. Robinson?

Q. Yes, sir—Chas. Robinson, who was appointed Receiver of this stock? A. Well, all I can say to you is, I know him to be Mr. Charles Robinson.

Q. A banker? A. Not that I know of.

Q. A lawyer? A. I don't know that he was ever admitted to the bar.

Q. A distinguished man of business, is he not? A. Not that I am aware of.

Q. Has he any business, that you are aware of? A. I have no knowledge.

Q. Is he a gentleman of large fortune? A. I understand he is a man of means.

Q. But without business? A. I don't know whether he is engaged in business or not.

Q. Did you ever hear of his being engaged in any business? A. I heard that he is engaged in some stock yard, as president or officer of some stock yard.

Q. Cattle-yard or something? A. A Cattle-yard.

Q. Horse or other cattle? A. I don't know—I don't know anything about it.

Q. Where does he live? A. I believe he resides in New York, sir.

Q. Did he, at the time he was appointed Receiver? A. I am not sure he did. If you ask me to speak from my knowledge, I really don't know where he did reside.

Q. Was he a friend of Mr. Fisk? A. I never saw them together.

Q. Mr. Coleman, will you please state now, whether you ever heard Mr. Fisk say he was a friend of his? A. What is that?

Q. Have you heard Mr. Fisk say that Mr. Robinson was a friend of his? A. No, sir.

Q. Have you never heard him speak of him? A. No, sir; never in any way.

Q. Except from what you have already testified in relation to your obtaining a transfer of the stock to your name, will you state all that you did as Receiver of that stock? A. The re-transfer of stock, pursuant to the two orders of the Circuit Court of the United States, to Heath and Raphael—I obeyed the orders at any rate made in the Circuit Court of the United States. The stock is entirely out of my possession and transferred.

Q. What else did you do, sir? A. I think that was my last official act.

Q. That was the last; but what other acts did you do as Receiver? A. Since that?

Q. No, sir; before—while you were Receiver. I want to know what you did while you were Receiver? A. As I have already stated, I except what you have done, by way of transfer. I can't recollect of any other act.

Q. Then all that you did for the security of the property, while it was in your possession, was to leave it unregistered, to leave it at the Erie office, and to keep it at your office and the Safe Deposit Company?

Mr. CURTIS :

He didn't say he left it at the Erie office.

Mr. PARSONS :

Didn't you testify that you left it at the Erie office? A. No, sir; when I caused the stock to be transferred to me, I surrendered up the original certificates taken possession of by me, surrendering them up for cancellation and to be cancelled, and I supposed they were cancelled.

Q. Then all you did for the security of the property, while it was in your possession, was to leave it unregistered, to leave it at the Erie office, and to keep it at your office and the Safe Deposit Company?

A. Leave what at the Erie office?

Q. Won't you answer the rest of the question, and then ask about that? A. At the time I caused the transfer or made a transfer to myself as Receiver, I surrendered up to the Erie Railway Company, for cancellation, the original certificates of stock taken possession of by me, pursuant to the order appointing me Receiver. I surrendered them up for cancellation and left them there, and thereupon new certificates were issued and delivered to me, which certificates were retained by me, and which stock became invested in me and remained in me until returned by me, pursuant to the order of the Circuit Court of the United States.

Q. Is that all the answer you have to make to the question? A. That is the only answer I can make.

Q. Have you now stated to the Committee all your services as Receiver of that stock? A. I think I have.

Q. Haven't you forgotten that you voted on the stock? A. I voted on the stock; I had forgotten that.

Q. When did you vote on the stock? A. At the first election; after my stock became vested in me.

Q. Was that in October, 1870? A. October '70—Yes, sir.

Q. For whom did you vote? A. I voted for Mr. Ramsdale and Mr. John Sisson, and, I think, a Mr. White.

Q. Mr. Justin A. White, one of the plaintiffs in the suit in which you were appointed as Receiver? A. I believe so.

Q. Didn't you vote for Mr. Fisk too? A. No, sir; I didn't vote for Mr. Fisk, and wouldn't vote. There was no opposition ticket. I voted for three directors.

Q. They were the directors whose names were presented by the existing Gould and Fisk board, were they not? A. I believe so.

Q. Now, except what you did for the security of the stock, as you have mentioned, and your voting for the Gould-Fisk directors—

Mr. CURTIS:

Did he say he voted for the Gould-Fisk directors?

Mr. VAN COTT:

Yes, sir; he has just stated so.

Q. Except what you say you did for the security of the stock, and voting for those directors, what did you do as Receiver? A. I caused proceedings to be instituted in the State and Federal Courts, at the time Mr. Robinson made the demand upon me, for the stock. I petitioned both Courts and asked them for instructions. A long, tedious proceeding followed in the Federal Court, lasting for a long time.

Q. Did you get any instructions from the State Court? A. None. I believe the proceedings there were to stand over, awaiting the action or orders of the Federal Court.

Q. Were they ever afterwards pursued in the State Court, after the Federal Court had acted? A. I believe the suits in the State Court were discontinued.

Q. Was anything done but to adjourn the applications in the State Court? A. Well, my lawyers attended there, Mr. Seward and Mr. Buckley.

Q. All you did was to present a petition, wasn't it, and then the application stood over? A. There was a petition in both Courts, and afterwards I was examined on several occasions, and attended a great many days, before the Master of the Federal Court.

Q. Was this proceeding before or after the order of the 11th of March, 1871, made by Judge Blatchford? A. This proceeding was, on my part, after the order appointing Charles Robinson Receiver. He demanded the stock of me; and in order that I might not be considered as violating the orders of either Court, I petitioned both Courts, simultaneously, in order that I might be protected, and in

order that my sureties might be relieved from any responsibility or liability.

Q. Now, will you say whether that was before or after the order made by Judge Blatchford, March 11th, 1871? A. I don't remember the order to which you refer.

Q. The order directing you to deliver this stock to the defendants in the suit in which you were appointed Receiver? A. My impression is, sir, that the proceedings were instituted subsequently to the order of Judge Blatchford. My petition in the proceeding will verify that. I want to be frank and straightforward in this matter.

Q. You are undoubtedly right; you finally acted under the instructions of the United States Circuit Court, and delivered over the stock to the defendants in the suit? A. I delivered over the stock, pursuant to the orders of the Circuit Court of the United States, acting at all times under the advice of my counsel.

Q. Have you now stated the services for which Judge Barnard taxed your fees as Receiver?

The CHAIRMAN :

Have you stated all the services?

A. I think I have now stated all my services—all my acts as Receiver.

Q. Have you the order made by Judge Barnard on that taxation?

A. I haven't, sir.

Q. Do you remember the amount? A. I think he allowed me one and a quarter per cent. on the market value of the stock.

Q. Whom did you understand that allowance was made against—who was to pay it? A. My understanding is, that the Erie Railway Company would.

Q. No, at that time, against whom did Judge Barnard tax that amount—as an amount to be paid by the plaintiff or by the defendant in the suit? A. The application was made to Judge Barnard, who certified what was in his opinion a reasonable compensation to me and to my counsel in the matter. Mr. Southmayd attended there. He asked me whether I would be willing to relinquish my claim or lien upon the stock for my fees and services.

Q. Who asked you? A. Mr. Southmayd. I said I had no intention of claiming a lien upon the stock, and would so certify in writing if he desired it. Pursuant to that understanding, he sent me a memorandum and I signed it.

Mr. CURTIS :

Q. Have your fees been paid, Mr. Coleman? A. No, sir.

Q. They still remain in *statu quo*? A. It still remains unadjusted.

Q. In Judge Barnard's order so far as he made an order in regard to the fees, were not the fees made payable by the Erie Railway Company? A. I believe so.

Q. Then that was taken in the nature of a certificate made by him to the Circuit Court of the United States? A. It was a certification

from the State Court to the Federal Court, in order that the Federal Court might make such order in the premises as it should deem proper.

Q. Has that Court made any order yet? A. No order; the matter has been adjourned from time to time, and Mr. Fisk, one of the parties to the suit, has died. Proceedings have, I believe, been pending to revive that suit. I have not been discharged as Receiver. My bond has not been cancelled.

Q. The death of Mr. Fisk suspended the matter for the present did it? A. Yes, sir; it suspended the matter for the present, and I am advised that the Federal Court is not in a condition, and has no jurisdiction to make the order until the suit is revived.

THOMAS R. FOX, having been duly sworn, testified as follows:

Examined by Mr. STICKNEY:

Q. You are employed where, and in what capacity? A. Poughkeepsie, New York, in the telegraph office.

Q. In the office of what Company? A. The Western Union Company.

Q. What was your position there in August, 1869? A. Operator.

Q. Do you remember being in August or September, 1869, before a Referee in Albany? A. I do.

Q. And you were there subpoenaed to produce telegrams passing between James H. Coleman at New York, and George G. Barnard at Poughkeepsie, on the 6th of August, 1869. A. I was.

Q. Did you produce the original telegrams at that time from your office? A. I did.

Q. And you also made copies of them at that time? A. I did.

Q. Will you look at the papers now shown you and state what they are, (handing papers to witness). A. Those are copies of the messages—of the originals.

Q. That you made? A. Yes, sir.

The CHAIRMAN:

At that time? A. Yes, sir.

Mr. STRAHAN:

At what time were those copies made? A. They were made the day before the examination.

Mr. Stickney proceeded to read the telegrams as follows:

First: "NEW YORK, 6th, 1869.

"Received, at Poughkeepsie, August 6th. To George G. Barnard: "Matters postponed by O'Gorman till Monday next. Folks at Branch "all right. How is your mother? JAMES H. COLEMAN. 16, paid. "Forty-two. T."

Second: "Aug. 6th, 1869.

"James H. Coleman, 79 Nassau Street, N. Y.: Very low: G. G. "BARNARD. (At the bottom.) 2, pd. 30."

(3d :) "N. Y., 6th, 1869.

"Received at Poughkeepsie, August 6th: To Hon. G. G. Barnard: "Come to New York without fail to-night. Answer, care 359 W. 23d Street. JAMES H. COLEMAN." (The words at the bottom being "15 D. H., Fisk's pass, 505.)

Fourth, "August 6th, 1869.

"To James H. Coleman, care of 359 W. 23d Street, N. Y. I "will be there if sent by you. Answer. G. G. BARNARD, (at the bottom), "9, Coll. 30."

Q. Now, on the third of those despatches which you have identified, will you state what the words at the bottom, "15, D. H. Fisk's pass" mean? A. It was a free message sent on Mr. Fisk's pass.

Q. On what Mr. Fisk's pass? A. James Fisk.

Q. Are those original telegrams anywhere in existence now? A. I could not find them at Poughkeepsie.

Q. Did you yourself make examination? A. Yes, sir.

Q. Are there any of those dispatches or copies now in your office? A. No, sir.

Q. Do you know when they were destroyed? A. I do not.

Q. How long ago must they have been destroyed? A. It must have been as early as the first of May, when we moved the office.

Q. They must have been destroyed then—the first of May, of what year? A. 1871.

Q. I will show you now the paper in Judge Barnard's handwriting, which has been put in evidence and marked for identification, "L. H. P., March 9th, 1872." Look at that paper and state whether to the best of your recollection the signatures G. G. Barnard, on those telegrams, which were in your office, were in the same handwriting as that paper appears to be? A. I think they were.

By Mr. CURTIS:

Q. Who first came to Poughkeepsie to converse with you on the subject of these despatches? A. The first I know of it was a subpoena, brought by Mr. Woodman, a lawyer of Poughkeepsie.

Q. Did not somebody visit you previous to that to ask you about them? A. No, sir.

Q. The first you knew of any inquiry about it was, that you had a subpoena?

By Mr. STICKNEY:

May I interrupt you a moment, to ask one more question?

Mr. CURTIS: Yes, sir, certainly.

By Mr. STICKNEY:

Q. Did you find at that time that you appeared before the Referee any later dispatches passing between those parties? A. No, sir, I don't think any were asked for later than that.

Q. I mean on the same day?

The CHAIRMAN:

These four were the whole? A. Yes, sir.

Examination resumed by Mr. CURTIS:

Q. Will you let me see that spurious Coleman despatch. Mr. Coleman says he never sent it, and so I call it spurious.

Mr. STICKNEY:

It was sent on Fisk's pass, and I suppose it was spurious. It answered its purpose very well.

Q. What is your practice when you receive a despatch which comes under somebody's pass in regard to the copy which you deliver to the person to whom the despatch is sent—do you invariably copy those words, "Fisk's pass"? A. Yes, sir.

Q. Always put it on? A. Copy it just as it is sent.

Q. Copy everything? A. Yes, sir.

Q. Did you do it in this instance? A. I did.

Q. Do you recollect it as a fact, so that you are now able to testify to it on oath that you put those words on the copy that was delivered to Judge Barnard, or do you only suppose they were? A. That is taken from the original copy, just as it was sent to Judge Barnard. That is the way he received it.

Q. Perhaps you do not understand my question. I am not speaking of this one; I am not speaking of any one from which you copied it; I am asking you now, whether you can recollect as a fact to testify to positively under oath that you wrote on the copy which you sent by the boy or other messenger to Judge Barnard, the words, "15 D. H. Fisk's pass, 505?" A. No; the operator who sent it to me, sent "15 D. H. Jim Fisk's pass," and I didn't put the "Jim" on; I left that out.

Q. I am not asking you what the operator in New York sent you; I am asking you now, whether you can testify as a fact that on the copy which you sent to Judge Barnard's house in Poughkeepsie, you wrote the words, "15 D. H. Fisk's pass, 505?" A. I did.

Q. You recollect that positively and with certainty now? A. I do.

Q. Was the copy which was sent to Judge Barnard in your handwriting? A. It was.

Q. All of it? A. Yes, sir.

Q. If that copy were now produced would you recognize it? A. I think I could.

Q. What is the mode of recording used in the office, or was used at this time in the office in Poughkeepsie? A. We take an impression of all the messages received.

Q. How is that? A. We take an impression.

Q. What instruments are used? A. Well, a common press and soft paper, which is wet.

Q. Do you use an instrument with a ribbon running through it? A. No, sir.

Q. What do you use? A. We use sound.

Q. What the operator in New York meant to say to you depended altogether upon your apprehensions of sound, did it? A. Yes, sir.

Q. Then, what did you do—did you write it out as fast as the sounds are produced? A. Yes, sir.

Q. You write it down? A. Yes, sir.

Q. Now, what becomes of the record? A. We file it in the office.

Q. You file it in the office? A. Yes, sir.

Q. Now, that is the record you say has been destroyed or removed? A. Yes, sir.

Q. It is not there any longer? A. No, sir.

Q. So that you have no means of testing the fact as to whether you sent Judge Barnard a full copy of it, have you? You have nothing to compare with? A. No, sir; not now.

Q. You have nothing now to compare with? A. No, sir.

Q. Then you have no means of testifying positively to the fact that you put those words, "Fisk's pass," on the copy, excepting your recollection? A. That is all; I know that is an exact copy of the one I sent to Mr. Barnard.

Q. You have no means of testifying that it is an exact copy except your recollection? A. That is all.

Q. No record with which to compare it? A. No, sir.

Examination by Mr. STRAHAN:

Q. When a message is sent to Poughkeepsie you receive a call; can you tell from what office the call is made? A. Yes, sir; each office has a call, and our call is "P. K."

Q. Can you tell what office the call is made from? A. Yes, sir.

Q. Not until the dispatch is entirely sent to you? A. Yes, sir; when the first call is sent.

Q. Can you tell when you receive a dispatch from New York City from what particular office in New York City the call is sent? A. Not when it is first sent in.

Q. In the case of this dispatch sent under "Fisk's pass," have you now any means of telling from what particular office in the city that dispatch was sent? A. No, sir; I have not; I know where I received it from.

Q. You can say which office you received it from? A. Yes, sir; from the main office, 145 Broadway.

Q. Do you know the custom—suppose I give a dispatch to a branch office in the city, is it sent first to the main office? A. Yes, sir.

Q. And transmitted from there to Poughkeepsie? A. Yes, sir.

Examination by the CHAIRMAN:

Q. At the time when you made these copies, what did you copy them from? A. From the original messages; they were made from the copies of the ones I received.

Q. Do you mean that in the case of messages sent from Poughkeepsie, you copied these from the original messages themselves, and

in case of messages received at Poughkeepsie, you copied them from the paper that you wrote at the time when you received the message?

A. Yes, sir.

Q. Then, at the time you made this copy, you had before you a paper, a copy of this telegram sent by James H. Coleman, and sent under "Fisk's pass"—at the time when you made this copy you had before you the despatch as you received it? A. I did.

Q. On the 6th of August? A. Yes, sir.

Q. And the copy you sent to Judge Barnard was an exact copy, was it, of the one from which you copied this? A. Yes, sir.

Examination by Mr. FLAMMER:

Q. Have you any personal recollection of these dispatches—do you recollect the fact of receiving and sending them? A. I recollect two, that one on "Fisk's pass," and the answer to it.

Q. You are the operator, are you, in the office at Poughkeepsie? A. Yes, sir.

Q. When you hear the sound you write out the message? A. Yes, sir.

Q. Then you make a copy, do you? A. Yes, sir.

Q. At once, before you send the original message? A. Yes, sir; we keep it at the office.

Q. At the telegraph office? A. Yes, sir.

Q. Then you send a messenger, do you, or do you go yourself? A. No, sir; I send my messenger.

Q. Did Judge Barnard come to the office and bring that, or did he send word by the messenger? A. He came to the office; I am pretty sure he did.

Q. One of these dispatches of August 6th, 1869, reads, "I will be there, if sent by you. Answer." Did you receive any answer to that dispatch? A. I don't think I did; I don't recollect any; I did not find any.

The CHAIRMAN:

You made a search for all dispatches of that day? A. Yes, sir.

Q. And you found none? A. No, sir.

Mr. TILDEN:

I want to ask as to the order in which these dispatches were sent.

Mr. CURTIS:

I don't understand that there has been any testimony as to the order in which they were received, but you are going to ask in regard to that, Mr. Tilden.

Mr. TILDEN:

Yes sir; and that ought to be given.

By Mr. TILDEN:

Q. State the order in which those dispatches were sent. (The wit-

ness placed the dispatches in the order in which they were sent, and they were marked in regular order, "1," "2," "3" and "4," respectively.) These dispatches were transmitted, then, in the order of the numbers you have marked upon the copies? A. Yes, sir.

[The telegrams were then read by the stenographer, as he had taken them down from the lips of the counsel.]

Q. Did you hear the order in which the stenographer read the telegrams? A. Yes, sir; and the order in which he read them is the order in which they were received.

Examination by Mr. STICKNEY:

Q. You say Judge Barnard came to the office at the time? A. I think he did.

Q. Will you look at Judge Barnard, who is now sitting in the room, and state whether, to the best of your recollection, he is the gentleman who came to your office on the afternoon of the 6th of August? A. He is.

Q. And who sent two of those dispatches? A. I don't know whether he came with both or not; I think he came—

Q. Did he send one from the office himself? A. Yes, sir.

Q. The last one?

Mr. CURTIS:

It is not necessary to go over that. We do not dispute that. We do not dispute that these dispatches, purporting to come from Judge Barnard, were sent by him.

Mr. STICKNEY:

We think it is material that it should appear that Judge Barnard sent this last dispatch in the office.

Q. It is the best of your recollection that Judge Barnard sent the last of those dispatches from your office? A. Yes, sir; I think he sent both—that he came there with both.

Mr. CURTIS:

Q. Isn't it very common for people to come to the office and write their dispatches on blanks which you furnish? A. Yes, sir; that is the rule.

Mr. STRAHAN:

Q. When you say it is a rule, what do you mean? A. That it is the rule of the Company.

Q. What do you do when the dispatch is not written on one of your blanks? A. We ask the parties to paste it on our blanks.

Q. It is a rule that the dispatch, before transmission, shall be written upon a blank furnished by the office? A. Written or pasted.

Mr. TILDEN:

Q. You do send them when that is not the case? A. Yes, sir; they are sent frequently.

The CHAIRMAN :

Q. If the dispatch is not written on one of those blanks there is no rule against sending it if it is sent to the office? A. No, sir.

Mr. TILDEN :

Suppose the dispatch is written on ordinary paper, you send it? A. Yes, sir.

Mr. STRAHAN :

That is you violate your rule? A. Yes, sir.

ROBERT REUTER, having been duly sworn, testified as follows:

Examined by Mr. VAN COTT :

Q. Did you, in the summer of 1870, take any certificates of stock of the Erie Railway Company to the office of that company for registration? A. Yes, sir; I did.

Q. When? A. I believe it was in June; I don't remember exactly the date.

Q. From whom did you receive it? A. From L. Von Hoffman and Co.

Q. What number of shares? A. 60,056 or 60,065; I don't remember exactly the amount.

Q. Was it at the office of the transfer office of the company. A. Yes, sir.

Q. In Twenty-third Street? A. Yes, sir.

Q. And do you remember to what officer of the company you presented it? A. To Mr. Harris, acting in place of Mr. Hilton, who is the transfer clerk.

Q. What did you ask him to do? A. To have them registered in the name of the Farmers' Loan and Trust Company.

Q. Well, sir, were they so registered? A. No, sir.

Q. What happened then? A. They kept them five or ten days, and I found an injunction was granted that the shares should not be returned to us—L. Von Hoffman & Co.

Q. Do you remember what lawyers were acting for the owners of the stock at that time? A. Mr. Burt was the English lawyer, Messrs. Evarts, Southmayd and Choate the American lawyers.

Q. That was the stock about which there was a long litigation in the United States Court, and which was afterwards transferred to the owners under the order of that Court? A. Yes, sir.

Q. Had you, previous to that time, tendered any stock at that office for transfer? A. No, sir; the books were closed.

Q. When you left the stock on that day for registration what was said to you about leaving it? A. Well, that I should leave them for examination and identification, and they would send them down to the Farmers' Loan and Trust Company and we should get them.

Q. Then you left them simply for examination, to be identified as

genuine stock, and to be sent from there to the Farmers' Loan and Trust Company for registration? A. Yes, sir.

Q. And that was the promise made to you? A. Yes, sir.

Q. And it was left under that promise? A. Yes, sir.

Q. Did you go to the office for the stock? A. Yes, sir.

Q. Before you heard of the injunction? A. Yes, sir; several times, and I was told that Mr. Hilton was in the country and he could not examine the stock, and that I should call again. I was there several times but I couldn't get the stock.

Q. Those were all the answers you received until you heard of the injunction and receivership? A. Yes, sir.

Q. Do you know what amount of Erie stock was in the hands of Von Hoffman & Co., belonging to foreign owners? A. About 100,000 shares.

Q. At that time? A. At that time.

Q. Do you mean including or in addition— A. (Interrupting.) Including the 60,000 shares.

Q. Do you remember what amount they afterwards received? A. They didn't receive any more.

Q. What was done with that? A. With the 60,000?

Q. The additional stock. A. It was returned—sent back to England.

Q. Did you hear any reason why it was sent back? A. No, I didn't hear any reason. The English shareholders wanted to have the stock back, because it couldn't be transferred.

WILLIAM H. MORGAN, having been duly sworn, testified as follows:

Before I go on, there is one little correction I want to make in the testimony which I gave the other day. If I recollect it correctly, I testified that Mr. Fisk—

Mr. VAN COTT:

One moment, if you please; you gave that testimony when Mr. Cardozo's case was on?

The WITNESS:

No, sir; I was not examined on his case. It is a very unimportant thing. I testified that Mr. Fisk, I thought, had given me the papers in reference to the orders of arrest against Mr. Ramsay, Mr. Smith, and others. I have refreshed my memory since and found out that it was not Mr. Fisk, but who it was I have been unable to recollect. At that time Mr. Fisk was out of town.

Examined by Mr. STICKNEY:

Q. How have you refreshed your memory? A. By referring to some memoranda that I had, and inquiring of several persons.

Q. Of whom have you inquired? A. I inquired of Mr. Dudley Field, and I think I also inquired of Mr. Stoughton.

Q. Mr. Dudley Field testified on oath that he remembered nothing whatever about it. What information did he give you that refreshed your memory on that point? A. He suggested the fact to me that Mr. Fisk was in Saratoga, immediately before he went to Albany to the election.

Q. Mr. Field stated that? A. I think I told Mr. Field that I recollected it so, and he then told me that he recollected so too, then I asked him if he gave me the papers, and he said he thought not. I have tried to recollect who gave me the papers, but I have entirely forgotten.

Q. Have you any recollection where you received the papers? A. I testified as to that—that I received the papers at the Erie office.

Q. But you have no recollection from whom you received them? A. I have no recollection. In all these matters I dealt with the officers of the Erie Company, and not with Field & Shearman or any of their firm.

Q. You testified that no one but yourself had any control over that in the arrest suit, as I understand you, didn't you? A. I don't think I testified that nobody had control over the suit, because I wasn't attorney in the suit, but no control in procuring the order of arrest and the service of those papers.

Q. But the members of the firm of Field & Sherman who were attorneys for the plaintiffs had control over the suit at all times? A. Of course the attorneys in the suit. I wasn't retained by them.

Q. If they were the attorneys you were bound to follow their directions were you not? A. No, sir; I should not have followed their directions.

Q. You would have signed stipulations in their name? A. No, sir; I wouldn't.

Q. You would not have done anything without their authority? A. I couldn't have taken any step in the suit, but I could have done what I was retained to do—procured and served the order.

Examination by Mr. VAN COTT:

Q. Will you look at the printed complaint in the case of the Erie Railway Company marked "Charge 3 C."

The CHAIRMAN:

What case has the witness been referring to thus far?

Mr. VAN COTT:

The explanation is in regard to the Susquehanna matter.

Q. Will you look at the printed complaint in the cause of the Erie Railway Company, marked "Charge 3 C.," and also at the original complaint in the same action, marked "Indorsed, filed, June 28th, 1870, heard on motion June 23d, 1870," and state wherein the printed complaint varies from the complaint so filed? A. I couldn't tell that, from such a long paper as this, without comparing it through; I couldn't swear to that, sir.

Q. Will you send to the Committee a copy of the amendments made to the original complaints, so that they can make a distinction between them? A. I haven't the things in my office. The papers on file, are the original papers, and the memoranda, and whatever I had, I haven't now got; I think the complaint was amended twice; I filed everything, so far as I know.

Mr. VAN COTT:

The witness states that he is not able to furnish a copy of the amendments made to the original bill.

The Witness:

The papers speak for themselves.

Q. Who prepared the original complaint? A. I made a memorandum of the complaint in the suit, myself, which I gave to Mr. Vanderpoel, and I then left town for a day or two; upon my return I found that Mr. Vanderpoel had given the papers to Judge Fithian, and I think Judge Fithian made a draft of the complaint and we prepared it together.

Q. Who applied for and obtained the order for an injunction, and Receiver, in that case? A. I think I did.

Q. You did? A. Yes, sir.

Q. Do you remember that you did? A. Yes, sir; I recollect that I applied for the order.

Q. Have you the original order here? A. No, sir.

Q. Didn't your subpoena call for it? A. Everything is on file; I think you will find it among the papers; at any rate, I know it is on file, because I have seen a certified copy.

Q. Will you state whether that is the original undertaking on the granting of the injunction in that cause? A. I think it is; if it corresponds with the date of the order, it is.

Mr. VAN COTT:

The undertaking is indorsed "Filed, June 24th, 1870;" it is in the sum of \$1,000, and executed by B. W. Blanchard and James Fisk, Jr.

Q. Is that the original undertaking on the appointment of the Receiver—the Receiver's bond? A. I have never seen this bond since it was executed; part of that is in my writing.

Q. Have you any doubt that that was the Receiver's bond executed by Mr. Coleman? A. I have no doubt that it is.

[It is produced from the files of the County Clerk, marked, "Filed June 25th, 1870;" it is in the sum of \$100,000, and purports to have been executed on the 23d of June, 1870, by James H. Coleman, as principal, John J. Bradley, James M. Sweeney and Terrence Farley, as sureties.]

Q. Will you look at the papers entitled in the Erie Railway Company and others, against Heath and others, produced from the files of the County Clerk, marked, "Filed July 5th, 1870," and say whether it

is a copy of the summons and the amended complaint in that pause ; it is the original as amended ? A. As I said before, the complaint was amended twice ; I recollect correctly ; it will appear by the orders allowing the amendments, if that is the case, and I have no doubt it is.

Mr. CURTIS :

Those are papers in the first suit ?

Mr. VAN COTT :

Yes, sir ; one is printed and the other is in manuscript.

The CHAIRMAN :

Are you going to put in the original complaint, at any stage of this investigation ?

Mr. VAN COTT :

We put in the printed complaint, which is the original complaint, with some slight additions.

The CHAIRMAN :

You put in the amended one ?

Mr. VAN COTT :

Yes, sir, because the original one was not here at the time from the County Clerk's office.

The CHAIRMAN :

Are you going to put in evidence the original unamended complaint at any time ?

Mr. VAN COTT :

Yes, sir ; and I will withdraw the other, if you will mark this one.

The WITNESS :

Have I testified anything about this paper which is being marked now ?

Mr. VAN COTT :

No, sir.

The WITNESS :

I don't know that I have testified about that at all.

Mr. VAN COTT :

The complaint on which Mr. Coleman was appointed Receiver.

Mr. CURTIS :

Were there any affidavits accompanying it ?

Mr. VAN COTT :

I don't know.

The WITNESS :

I have testified in regard to that paper, that it is one of the amended complaints. I don't think I ever saw the original complaint at all.

[The summons and original unamended complaint in the case of the Erie Railway Company and others against Heath and others, were marked "Charge 3 C."]

The WITNESS :

I have not testified about that paper; I have not seen it yet.

Mr. VAN COTT :

I also produce from the County Clerk's office, an order dated September 17th, 1870, purporting to have been made by Mr. Justice Barnard, which enlarges the original order appointing a Receiver, and which sets out a copy of that original order appointing a Receiver, which we are not able to find. It is marked "Filed October 14th, 1870." The exhibit was marked "Charge 3 K."

Q. Who prepared the complaint in the cause of James Fisk, Jr., and Mortimer Earle, against Messrs. Heath and others? A. I prepared that and submitted it to Judge Fullerton, who was counsel in that case, and he made some slight changes, but with that exception, I did it myself.

Q. Do you remember whether any undertaking was given in that cause, on the granting of the injunction? A. There was no injunction in that case, sir.

Q. No; that is true. Look at the paper shown you, and state whether that is the bond given by Mr. Robinson as Receiver under the order in that cause? A. I drew that bond, but I did not see it executed or filed. I have no doubt that is it. It seems to me to be filed.

[It is produced from the County Clerk's office, indorsed "Approved March 10th, 1871, signed G. G. Barnard, J. S. C."]

Q. Is that Judge Barnard's signature? (Handing paper to witness.)

A. It looks like it.

The above paper was also indorsed "Filed March 10th, 1871"; it is in the sum of \$50,000, and executed by B. W. Blanchard and Henry Holly, as trustees

Q. Look at the exhibit "E. E." in the case of James Fisk and Mortimer W. Earle against Heath and others, and explain why the 28th of February, 1871, is in the caption, and March 3d, 1871, is the date at the foot of the order? A. I couldn't tell you that, because this is not the original order. I recollect this circumstance about the granting of the order, that this purports to be a copy of that. Judge Fullerton and Mr. Vanderpoel told me that they had applied for that order on a certain day, and I know that Judge Barnard kept the papers and did not decide for several days whether he would grant the order or not. I think that the original order would probably show something about that. I haven't seen it since the time it was filed.

Q. Will you explain why it is marked "Filed March 10th, 1871," instead of having been filed on the 3d of March, 1871, when it appears to have been signed by Judge Barnard? A. Will you repeat your question, please?

Q. (Question repeated.) A. If I saw the original order, I could tell exactly.

Q. If the order was made on the 3d of March, 1871, where was it from that date until the date on which it was filed? A. Can you show me the original order?

Q. No, sir; I can't find it here. It is an order, that should be in your possession. A. It should be on file. I never kept any Special Term orders in my possession; I always filed every order that I got.

Q. The question is where it was between the 3d and 10th of March? A. I can fix those dates, from the original order, because I think I drew it myself.

Q. I don't ask you to fix the dates of the original order, but to tell me where the order was from its date to the date of filing? A. If you will show me the order, I can tell you all about it; I don't know that this is a copy. I have never seen that copy before.

Q. I don't ask you that, I ask you where that order was?

Mr. VAN COTT:

Mr. Chairman, am I to have an answer, yes, or no?

The CHAIRMAN:

Q. Do you know? A. I recollect where the order was, from the time it was presented, to the time I next saw it. I think I filed the order myself. I have explained already that Judge Fullerton and Mr. Vanderpoel applied to Judge Barnard for that order, and it was some days after the order was handed to Judge Barnard, before it was signed and returned. I presume that the explanation of it is that, in drawing the order, I put in the date it was applied for, and that date remained in the order.

Mr. VAN COTT:

Q. Now, the question is, not as between the 28th of one month and the 3d of the next, but where the order was between the 3d of March when it purports to have been signed, and the 10th of March when it was filed, if you know that? A. I can't fix those dates with absolute certainty; I can give you my best impression about it, if that is all you want.

Q. Very good? A. My best recollection about the matter is, that Judge Fullerton got that order back from Judge Barnard, on the ninth, and that I had copies of the papers, made as quick as I could and filed the papers next day.

Q. Why didn't you serve that order before the 11th of March? A. Because I couldn't get the copies prepared ready for service. I served those papers as quick as I could, after I got that order. I would have been glad to have them served a week before they were.

Examination by Judge BARNARD :

Q. When this order was first presented by Judge Fullerton and Mr. Vanderpoel, do you recollect whose name, if any, was inserted in there, as Receiver? A. I don't think any name was inserted in this last order. In the previous order—the original order, I had inserted the name myself. In the case of this order, before the order was presented, I called upon Mr. Coleman, and told him I intended to have an application made for a receivership, in this last suit, and that I supposed, under the law, he was the proper man to be Receiver, and asked him, if he was ready to act, if he was appointed. Mr. Coleman said he was sick of the matter and declined to have anything to do with it, and wouldn't be connected with the suit; whether his name was put in the order as drawn or not, I am unable to say, without seeing the original order.

Q. In the first order, whose name was inserted originally? A. I put in the name of Mr. Tweed, Jr.

Q. Was that name left there? A. When I applied for that order, Judge Barnard said he would not appoint Mr. Tweed, because he was the son of one of the directors, and it would be improper. Mr. Tweed's name was struck out, and Mr. Robinson's name inserted.

Q. Did Judge Fullerton, Mr. Vanderpoel and yourself consider that you were entitled to relief from the papers, at that time? A. Yes, sir; and I consider that every order was proper.

Q. Was there any combination, conspiracy, corrupt arrangement or agreement between any of these parties with Judge Barnard, to do any acts of impropriety, illegality or crime? A. I never heard or suspected anything of the kind, or I would not have been connected with the matter myself.

Q. In that suit or in any other suit, have you been engaged in conspiracy with Judge Barnard to use the judicial process of the Court for the purpose of accomplishing by judicial means an illegal end? A. I never was. I was never intimate with Judge Barnard. I was never at Judge Barnard's house, I think, except twice in my life. One occasion was the occasion when I applied for the order of arrest against Ramsay, and the other occasion was when I went there to apply for an order in a matter that has nothing to do with this investigation.

Q. Have you ever spoken to Judge Barnard in your life about any cause that was to come before him or that was before him, or that had been before him? A. I never have.

By Mr. CURTIS:

Q. Can you explain the situation of that Heath and Raphael stock, and the grounds on which the first action was instituted, in regard to it? A. Yes, sir. The situation at that time, so far as known to the counsel and to the parties, was this: A resolution was passed by the stock boards in London and other places in Europe to the effect that no delivery of Erie Railway stock should be a valid delivery except such stock as was stamped in the name of Heath and Raphael, who

were to act as trustees for the owners of the stock, for the purpose of securing the good management of the property of the company. Mr. Fisk and Mr. Gould were at that time carrying about two millions of Erie stock in London, and as I was told by them, in order to be able to fulfill outstanding contracts, they were obliged to send in their stock, and have it stamped by this committee, called the Heath and Raphael Committee, and to pay a shilling a share for the privilege of the stock stamped. Heath and Raphael, after they had procured the custody of a large amount of stock, commenced to use this stock for the avowed purpose of turning out the then management of the company, without any regard to investigating their conduct; and the first suit was brought by the Erie Railway Company, and by two of the directors, one of whom was part owner of these two million shares of stock—Mr. Fisk, for the purpose of having a Receiver appointed, on the ground that these trustees had abused their trust, and for the purpose further, of having the stock re-distributed among the *bona fide* owners. I was going to speak now about the second suit. I procured this order the day this order was served upon Mr. Heath, who had this stock in his possession, Mr. Tweed came to me, a member of the firm of Evarts, Southmayd and Choate, who had been representing Heath and Raphael in the suit they had brought in the United States Court against the Erie Railway Company, and requested me to let him have copies of the paper. I gave him copies of all the papers, and from that time until the end, I believe I took pains to see that Messrs. Evarts, Southmayd and Choate, were informed of all proceedings. I think I had an affidavit among the papers somewhere showing that I kept them informed. Mr. Southmayd said he didn't care anything about the Supreme Court, and would not pay any attention to the suit. They always acted upon that plan. That is substantially the history of the first suit, except so far as it appears from the papers.

Q. Did you and your associate counsel who acted for the plaintiffs in that suit consider there was a proper question to be litigated in respect to the title of Heath and Raphael to that stock? A. We did; and I consider now that that suit was proper, and have often urged Evarts, Southmayd and Choate to allow that question to be tried, and urged them to appear in the case, but they have always declined.

Q. The receivership of the stock was granted for the purpose of placing it *pendente lite* in the hands of a trustee, who could hold it until the litigation was ended? A. Yes, sir; who could hold it *pendente lite* until the *bona fide* holders claimed it. The relief asked was to have it distributed among the *bona fide* owners.

Q. Now, as regards the purpose of the second suit? A. The reason the second suit was brought was this: After the first suit was brought, I got other information. Messrs. Heath and Raphael had given receipts for the certificates that were placed in their hands. I found that these receipts were being bought and sold in the London market, as representing stock, and that the identical certificates of stock which had been placed in the hands of Heath and Raphael were being

bought and sold in the New York market, so that there was a double representation of that stock. Among the stock of Mr. Fisk that he had been carrying in London, part was sent to this country, and when it arrived here it consisted of these receipts, and not of these certificates. I considered then that we had absolute proof of everything we charged about the violation of the trusts of those trustees, and that it was better to abandon the old suit and commence a new suit that set up the thing, so that they could not gainsay it at all. The counsel I had consulted in the matter agreed with me.

Q. That was the cause of the second suit? A. Yes, sir. We thought we had got absolute proof of everything that was necessary to have that stock distributed, and that it was a better suit than the old suit, and also involving much less trouble in litigating it and bringing it to a termination.

Q. Do you know who Heath and Raphael are? A. I only know from hearsay; I have seen their bill in the United States Court, where they described themselves as being bankers in London, and I am told they are stock dealers and stock brokers in the London market.

Q. Do you know whether they are Jews? A. I have been told they are Jews. I don't know it.

Mr. NILES:

Q. Do they live in this city or State? A. No, sir.

Mr. NILES:

Q. Have they a house here? A. Not that I know of.

Q. How came they to be originally constituted trustees of this stock? A. The reports of the newspapers were that they had procured a resolution to be passed by the Stock Exchange in London that no delivery of stock should be a good delivery without their name stamped on the back—a blank power of attorney to transfer it.

Q. In the course of the appointment of either of those receiverships, either Coleman's original receivership or the one that was appointed on the second suit, do you know of one single act done by Messrs. Fisk and Gould, or by any one employed by them, in concert with Judge Barnard, in regard to the matter of procuring Judge Barnard's judicial action except what was done publicly and upon papers properly presented? A. I do not, sir; I don't think that they knew what Judge I would apply to for those orders.

Re-examination by Mr. VAN COTT:

Q. Do you know the contents of the original complaint, in the case of the Erie Railway Company, against Heath and others? A. I have read it over a good many times, and took part in drawing it myself.

Q. Is there any allegation in that complaint, that either of the plaintiffs owned any of the stock, or had any equitable title to any of the stock for which Mr. Coleman was appointed Receiver? A. Yes, sir.

Q. Now, sir, the complaint is before you, I wish you would turn to

it. Now, read any part of the complaint, which shows that either of the plaintiffs' claim to be the legal or equitable owner of any of the stock of which Mr. Coleman was appointed Receiver? A. Yes, sir; he was appointed Receiver of all the stock that was in the name of Heath and Raphael. This copy seems to be marked "IV," in Roman letters. I will read; "That the plaintiff, James Fisk, Jr., is a stockholder and director in said Erie Railway Company; owning, in his own right, a large amount of stock of all the classes herein referred to, and that the plaintiff, Justin D. White, is a director of said railway company, residing at———in the State of New Jersey, and is also a stockholder as aforesaid." That is the first. There is no way of designating any portion of this. It is not folioed. It seems to be marked "Subdivision—LVI." I can't tell exactly what it is. I find these words: "And that this plaintiff, James Fisk, Jr., together with other stockholders and directors of the said Erie Railway Company, now in the management thereof, were compelled to and did, in order to have stock which they owned and held in Europe, and which it was necessary for them to have placed upon the markets there, pay said assessment, upon that said stock, and submit to the conditions aforesaid." That whole section ought to be taken together, because this gives so small light on that subject.

Q. Is there anything else in that complaint, on that point, as showing that they claim to have a legal or equitable title to any of the stock, for which Mr. Coleman was appointed Receiver? A. I couldn't tell you that, sir, without reading the whole thing from beginning to end. I haven't looked at it since it was filed.

Q. Wasn't the first averment that you read from the complaint, a mere averment that the plaintiff or plaintiffs owned stock of the Erie Railway stock, known as common stock and preferred stock, without indicating that that stock, so owned, was any part of the stock held by Messrs. Heath and Raphael? A. No, sir; nobody of good sense, would understand it that way. The stock was put into the hands of certain persons.

Q. Never mind that. You have not answered my question. A. I am going on to answer you. It was the class of stock that we wanted to have a Receiver appointed for.

Q. And the second averment that you read, did that state that any of the stock which the plaintiffs had in Europe, was then held by Heath and Raphael? A. Yes, sir; in reference to what I read from the complaint, I will say that I don't think the words, "then or now," were in there; and taking the whole section together, it states that they viewed that matter and the whole thing on the basis that Heath and Raphael had stock, or else it would not have been covered by the receivership.

Q. Is there any averment in the complaint that a valid transfer of the stock held in Europe had not been made to Heath and Raphael? A. No, sir; and if I recollect it correctly, the complaint states just exactly what had been done, and as a matter of law that would not be a good transfer of stock.

Q. Was there any specification in the complaint of any numbers of shares owned by either of the plaintiffs, held by Heath and Raphael, or in which the plaintiffs had any interest? A. The paper will show for itself; I cannot keep it in my mind.

Q. You have given your opinion here as a lawyer that there was a perfectly good case. I want you to state that law? A. I think that one share would have been as good as a million; so far as the right to have a Receiver appointed was concerned, the owner of one stock had as good a right as the owner of all the rest of the stock of the company.

Q. Was there a specification in the complaint of any number of shares belonging to either of the plaintiffs, or in which either of the plaintiffs had an interest, which specific shares were held by Heath and Raphael? A. Yes, sir; 1,000 shares and upwards—over 1,000 shares.

Q. Will you show me that averment? A. It is all down there; the 1,000 shares I have referred to before; the next question I did not finish my answer to exactly.

[The Reporter again read the question and answer as follows:]

Q. “You have given your opinion here as a lawyer that there was a perfectly good case. I want you to state that law. A. I think that one share would have been as good as a million; so far as the right to have a Receiver appointed was concerned, the owner of one stock had as good a right as the owner of all the rest of the stock of the company”—

The Witness :

(Continuing the answer)—To have his rights protected; although as a matter of equity perhaps, the owner of a large quantity of stock would be more favorably considered by the Court, as a matter of law I suppose that the owner of one share has got a right to take all the means to protect his rights that the owner of any larger number has.

Q. I understand you to affirm that the complaint avers that the plaintiffs are owners of a specific number of shares of stock held by Heath and Raphael, and also avers that that stock was put in the name of Heath and Raphael by them, or by their authorization. Does the complaint contain any averment that the plaintiffs, or either of them, had demanded of Heath and Raphael the transfer to them of any stocks in which they were interested? A. I couldn't tell you that without reading the complaint all through; I don't recollect.

Q. Will you say as a lawyer, that if the complaint does not contain such an averment, any case was made for the interference of a Court of Equity by the appointment of a Receiver? A. I decline to give my opinion on that subject; I must refer you to the complaint as it stands; I thought the case was a good case, and I think all the counsel thought so at the time it was brought.

Q. If the complaint contains the averment, about which I have asked you, where was the difficulty about contesting the title of Heath and Raphael to the stock and obtaining the proper relief in the suit in

which Coleman was appointed Receiver and which had been transferred to the United States Court? A. That suit contained a great deal of matter that was unnecessary to be gone into in order to accomplish the purpose of having the stock redistributed. They charged a conspiracy with Vanderbilt and divers other persons, and we advised to have the thing accomplished with as little litigation as possible.

Q. Didn't it contain all the substantive averments which you suppose impeached the title of Heath and Raphael, which were afterwards incorporated into the case of Fisk and Earle *vs.* Heath and Raphael?

A. No, sir.

Q. What averments impeaching the title of Heath and Raphael are contained in the suit of Fisk and Earle which were not contained in the suit of the Erie Railway Company and Fisk? A. That I cannot tell you exactly without comparing the two, but one very important thing was, that that last complaint set up the exact receipt that was given by Heath and Raphael when they took this stock.

Q. Do you remember anything else? A. Not at this time, I have not read those papers over, for, I suppose, six months.

Q. Was there any difficulty in incorporating that precise receipt by way of amendment in the complaint in the Erie Railway Company case? A. It might have been done, but the Erie Railway case was split in two, one half of it remaining in the State Court and one half of it was in the United States Court. Mr. Southmayd was publishing in the newspaper that he could do anything with the United States Court, and I didn't care about going to his tribunal.

Q. Oh, then, that was the reason that influenced you, that you preferred going into the Supreme Court before Mr. Justice Barnard, to going into the United States Court before the Federal Judges? A. No, sir; I preferred to do just the very thing that Mr. Southmayd didn't want done, I didn't care what it was.

Q. Now, repeat what Mr. Southmayd said about his being able to get what he pleased, or to do what he pleased in the United States Court?

A. He never said anything to me about it. I read a good many articles in newspapers that I supposed emanated from him, and I understood that he had made remarks to that effect in the United States Court in an argument before Judge Blatchford. Judge Fithian told me he did.

Q. What was it Judge Fithian told you? A. He told me Mr. Southmayd had made remarks to that effect in the United States Court in an argument before Judge Blatchford, when I was not present.

Q. That he could do what he pleased with the United States Court?

A. No, sir, to the effect that he would not go into the State Court; he didn't regard it as any decent tribunal; that he had a perfect contempt for it.

Q. That is "a horse of another color," it seems to me? A. I know it is. Well, to cut this matter short, I can simply say that nobody had anything to do with where that suit was brought except myself, and I didn't do it from any motive that my client knew anything about.

Q. I now ask you whether that complaint in the Erie Railroad case

unamended would not have allowed you to prove the exact receipt, the terms of which you afterwards found? A. It may be so.

Q. Have you any doubt about it? A. I thought the simpler way was to bring a new suit.

Q. And you brought the new suit and got the new receivership before Judge Barnard, because you thought that was a simpler way. Didn't you perceive, sir, that it was just as easy for Heath and Raphael to cut that suit in two by removing it into the United States Circuit, as it was to cut the original snake in two? A. On the contrary, I knew it was not.

Q. Why not? A. Why, because I didn't want that suit removed?

Q. That don't answer the question? A. Well, there was no law to do it.

Q. No law to remove that second suit? A. No, sir.

Q. Was there not the same law to remove the second suit that there was to remove the first suit? A. The papers speak for themselves.

Q. Well, you are speaking now of the papers; I am asking for your reason? A. I don't propose to give you my motive. I thought it was best to bring it in that shape.

By Mr. NILES:

Q. He asks whether there was any more difficulty in removing the second suit into the United States Court? A. I say there was no law for doing it. I didn't want that suit cut in two. I didn't want to try a suit in two courts.

By Mr. VAN COTT:

Q. I ask you if there was any more difficulty in Heath and Raphael removing their part of the second case of Fisk and Earle against them and others into the United States Court than there was in removing the first suit into the United States Court? A. I have answered that, I think.

Q. I think not?

Mr. CURTIS:

Answer it Mr. Morgan. A. I don't think it could have been removed. I don't think there was any law to remove that last suit into the United States Court.

By Mr. NILES:

Q. What was the difference between the two suits that made the difference in the ease of removal? A. The first suit asked for an injunction for one thing. That was a part of the relief sought. That was the ground upon which Judge Ingraham decided that it should be removed as to there.

Q. Any other fact that rendered it more difficult to remove that than the first? A. That is one.

By Mr. VAN COTT :

Q. What other difference was there between the two suits that affected the right of Heath and Raphael to remove the second suit into the United States Circuit? A. I couldn't tell you all the difference without taking up those two complaints and comparing them.

Q. I want you to tell me the difference bearing upon that question? A. I don't recollect now all the points. I presume I thought the whole thing over at the time?

By Mr. NILES :

Q. Was there any difference in parties that you recollect? A. There were different parties.

Q. I mean any difference of parties that affected the question of the right to remove?

Mr. CURTIS :

The question of residence?

Mr. NILES :

Of citizenship? A. I don't think there was any difference about that.

By Mr. VAN COTT :

Q. Do you not know that the ground on which the suit of the Erie Railway Company was removed into the United States Court, or a part of it as you say, was that Heath and Raphael were Englishmen resident in England? A. I don't think that was it.

Q. You don't think that was the ground? A. It was that they were aliens, I believe. I don't think that being Englishmen made any difference.

Q. I suppose their color would have made no difference, but their being Englishmen made them aliens, didn't it? A. I suppose so.

Q. And their being aliens was the ground of the removal? A. I believe so.

Q. Were not Heath and Raphael defendants in the last suit in which Robinson was appointed Receiver? A. Yes, sir.

Q. Had they ceased to be Englishmen resident in England? A. Not to my knowledge.

Q. Had they ceased to be aliens? A. I don't know whether they had or not; I don't suppose they had.

Q. If they were aliens at the time the second suit was brought, did not the same reason exist for removing the cause into the United States Circuit that existed when the first cause was removed into the United States Circuit? A. No, sir.

Q. Well, tell me why? A. Because the suit was not removed alone on the ground that they were aliens. It was removed on the ground that they were aliens and we sought to enjoin them from doing so.

Q. Then you say, as a lawyer, that the act of Congress under which that suit of the Erie Railway Co. was removed into the United

States Circuit, authorizes such a removal where an injunction is sought by the complaint, and don't authorize the removal where a Receiver is sought without an injunction? A. Judge Ingraham decided that question, and I thought he was wrong about his decision; I would rather refer you to his decision on that question.

Q. Excuse me; I will have an answer to the question. I don't know anything about Judge Ingraham. A. I decline to give my opinion on those subjects; I don't sit here to give my opinion, I will testify to any facts you want.

Q. Now will you look at the paper shown you and say whether that is not the affidavit, and the only affidavit used in connection with the complaint in the Erie Railroad Co. on which the order for an injunction and Receiver was made on the 23d of June, 1870. A. I think it is.

[The paper is marked "Charge 3 L."]

Q. Will you look at the paper shown you, and state whether that is not the only affidavit on which the order was made by Judge Barnard on the 24th of June, 1870, enlarging the order made on the 23d of June—or those two affidavits, rather? A. I believe so.

Q. And those affidavits purport to have been sworn to by you, and by James Fisk, Jr., before Judge Barnard, do they not? A. Yes, sir; I think Mr. Fisk went down to Court with me that morning about another matter.

[The paper referred to is marked "Charge 3 M."]

Q. Look at the papers shown you, and state whether they are not the two original orders made by Judge Barnard on the 23d and 24th of June? A. Yes, sir; there is a certificate or something there; that was not on there.

[The papers referred to are marked "Charge 3 N."]

GEORGE S. FOWLER, a witness called on behalf of the prosecution, sworn, and examined by Mr. STICKNEY:

Q. Where do you live now? A. 319 West Twenty-third Street.

Q. With whom? A. With Mr. Bullard.

Q. Not with Mr. Cole? A. No, sir.

Q. Do you remember the night of the 6th of August, 1869, when Mr. Fisk was appointed one of the Receivers of the Albany and Susquehanna Railroad? A. Yes, sir; I remember reading about it afterwards.

Q. Where were you that night? A. I think I was about the building there—the Opera House.

Q. Did you see Mr. John W. Sterling? A. Yes, sir.

Q. Of the firm of Field & Shearman? A. Yes, sir.

Q. Where did you see him? A. I think that I was down stairs when he came down from the Opera House.

Q. When he came down; from what room in the Opera House? A. That I couldn't tell, sir.

Q. Where were you, down stairs? A. I think I was standing outside by the door there; I couldn't say positively.

Q. What took place between you and Mr. Sterling? A. I think Mr. Sterling came down, and said that he was going for Judge Barnard, and I told him that I had seen him pass there.

Q. What else? A. We went in the house.

Q. Who went in the house? A. Sterling and myself.

Q. Into what house? A. I think it is two doors from the Opera House.

Q. No. 313 West Thirty-third street? A. I think that is the house.

Q. What took place there? A. I remember Judge Barnard's reading and signing some papers there—what they were, I didn't know at the time, and I never knew, in fact.

Q. Were you standing outside of the outer door of the Opera House? A. I think I was.

Q. How long had you been standing there? A. I couldn't tell you, sir.

Q. Where had you last come from when you were standing there? A. That I don't remember.

Q. Had you come from 313 West Twenty-third Street? A. That is more than I can tell you, sir.

Q. Where were you when you saw Judge Barnard pass? A. I think I was down there by the door.

Q. By the door of the Opera House? A. I think so.

Q. Which way did you see Judge Barnard pass? A. Going down that way, I think.

Q. Which way do you mean by down? A. Down Twenty-third Street.

Q. East or west? A. That is west I believe—down Twenty-third Street.

Q. Going from Eighth Avenue towards Ninth? A. Yes, sir.

Q. How long before you met Mr. Sterling, had you seen Judge Barnard pass there? A. I can't remember, sir.

Q. Give your best recollection. A. I couldn't tell whether I had been there an hour, or two, or five minutes; I couldn't tell.

Q. Could it have been two hours, possibly? A. I couldn't tell you, possibly, sir.

Q. Could it have been one hour, possibly? A. I couldn't tell.

By Mr. NILES:

Q. State as near as you can? A. I have no recollection.

Q. Call up your recollection, where you were, where you were going, and so on, and fix it as near as you can? A. I haven't any recollection.

By Mr. STICKNEY:

Q. Have you any recollection that you did see Judge Barnard pass, at all? A. Yes, sir; I think I did.

Q. Are you sure on that point? A. I am pretty positive about that, sir.

Q. Have you no recollection whatever as to how long you were standing there? A. No, sir.

Q. None whatever? A. No, sir.

By Mr. NILES:

Q. Have you no recollection how long you stood there after you saw Judge Barnard pass, before you saw Sterling? A. No, sir; I couldn't tell precisely.

Q. I say, as near as you can; we don't mean how long you were standing there during the evening, but how long after Judge Barnard passed, before Sterling came up? A. Well, I couldn't tell, because I don't remember.

Q. Can't you give any idea; that is the point; you know it was not two days? No; it was not. I don't think it was very long; I don't know how long.

Q. As near as you can fix it in your mind. No man could truthfully say he knew exactly? A. I should say a few minutes; I don't know how many.

By Mr. PRINCE:

Q. This was on the Twenty-third Street entrance? A. Yes, sir.

By Mr. STICKNEY:

Was all that you noticed, this fact, that Judge Barnard passed along on the sidewalk? A. Yes, sir.

Q. Did you notice where he went? A. I thought he went in that house.

Q. With whom was he? A. I don't think there was any one with him.

Q. Are you sure on that point? A. I am pretty positive.

Q. But you noticed him? A. Yes, sir.

Q. Watched him, and saw him go in at No. 313? A. Yes, sir.

Q. Who were there in No. 313 when you went in there with Mr. Sterling? A. There was no one but Judge Barnard, that I remember seeing there.

Q. You are positive on that point? A. I am very positive.

Q. Very sure there was no one else there, except Judge Barnard? A. I am very positive; yes, sir.

Q. Was he holding court? A. I should think not.

Q. There was no clerk of the Court there? A. No, sir; no one there but him.

Q. Did you see Mr. Fisk anywhere that evening? A. I don't remember of seeing him; no, sir.

Q. Had you told Mr. Fisk that you saw Judge Barnard pass? A. I don't remember of telling him.

Q. Can you swear positively that you did not see Mr. Fisk about that time? A. I think I could; yes, sir; I don't remember of seeing him at all.

Q. Did Mr. Fisk go out with Mr. Sterling from the Treasurer's Office of the Grand Opera House? A. No, sir.

Q. You can swear positively to that? A. I can swear to that.

Q. And positively? A. Yes, sir.

Q. Without any doubt?

Mr. PRINCE:

He says positively.

Q. How many times were you in No. 313 that evening? A. I think only once; I couldn't swear; I think only once.

Q. Where else did you go? A. I couldn't tell you, sir.

Q. You have no recollection whatever? A. No, sir.

Q. Did you see Mr. Gould that evening? A. Not that I remember.

Q. You have no recollection whatever on that? A. No, sir.

Q. Have you any recollection of seeing any one on that evening, except Judge Barnard and Mr. Sterling? A. No, sir; I can't say that I have.

Q. But you remember seeing them very distinctly, and you remember seeing any one else not at all? A. I can't remember any particular person that I saw that evening.

By Mr. NILES:

Q. What had you been doing during the evening, prior to seeing Judge Barnard? A. Well, I presume I had been standing around there, as was customary with some of the gentlemen around there.

Q. Had you received any instructions from anybody connected with the Erie Railroad Company, having reference to Judge Barnard's arrival in town, or Judge Barnard? A. I haven't any recollection; I don't remember of any.

Q. Had you during that evening or afternoon dispatched any telegram to Judge Barnard? A. No, sir.

Q. Had you been, or did you know of any body going, to meet him at the depot on his arrival here? A. No, sir.

Q. What was this house he went into? A. I don't know what it was.

Q. Was it the first time you was ever in it? A. I couldn't swear to that.

Q. What did it appear to be? A. I don't remember what there was in it, or what it appeared to be.

Q. Did you ring the bell—you or Sterling—to get into it? A. I don't remember that.

Q. Did any one admit you, or did you walk in first and see Judge Barnard? A. I don't remember.

Q. Did you first speak to Sterling, or Sterling first speak to you in regard to Judge Barnard? A. That I don't remember, sir.

Q. Don't remember whether you asked him if he wanted to find Judge Barnard? A. No, sir.

Q. Or whether he asked you where Judge Barnard was? A. I do not; no, sir.

Q. Was any one else with you there on the sidewalk? A. Well, I presume there was; for I should not have been standing there probably alone.

Q. Do you remember who? A. I don't remember who; no, sir.

By Mr. PRINCE:

Q. How came you to go with Mr. Sterling to 313? A. Well, I presume that I told him that I saw him go in there.

Q. That you had seen Judge Barnard? A. Yes, sir.

Q. How did you know that Mr. Sterling wanted to find Judge Barnard? A. He must have told me that he was going to find him.

Q. Then your recollection is that Mr. Sterling, coming out through the entrance of the Opera House, saw you standing near the entrance and told you that he wanted to find Judge Barnard? A. Yes, sir.

Q. And you thereupon told him that you had seen Judge Barnard pass and go into No. 313? A. Yes, sir.

Q. And you went there with him? A. Yes, sir.

Q. That is your best recollection about that occurrence? A. That is my best recollection.

Q. That is all that you recollect in substance? A. Yes, sir.

Q. When you went into this house, what room did you go into—313—back room or front room? A. I can't recall that night; there were two rooms.

Q. You saw two rooms? A. Yes, sir.

Q. Were you in two rooms? A. I have no doubt we were.

Q. Was there any furniture in those rooms? A. I couldn't swear that there was or was not.

Q. Did you stand up all the time, or was there anything to sit on? A. I don't remember.

Q. Was there any table in either of those rooms? A. I don't remember.

Q. Were any papers signed while you were there? A. I think he signed it; I don't know where he signed it.

Q. While you were there? A. Yes, sir.

Q. Then there was pen and ink there? A. I don't remember whether there was or not, or whether some one went for it.

Q. Whom else did you see there besides Judge Barnard and Mr. Sterling. A. I don't remember of seeing any one.

Q. You don't recollect whether there was any table in the room. A. No, sir.

Q. Do you know whether any one was living in the house at that time? A. No, sir, I don't know.

Q. Do you recollect ever having been in the house before or since? A. I have been in it since; whether I had been in it before or not, I don't know.

By Mr. NILES:

Q. About how soon after the occurrence were you next in the house. A. I couldn't tell you; I don't remember.

Q. Was it lighted, when you went in. A. I think there were lights there ; yes, sir.

By Mr. PRINCE :

Q. Do you recollect any thing peculiar about the looks of the room, different from any other house that you go into. A. No, sir ; I don't remember about it.

Q. Suppose there had been no carpet there, and no furniture in the room, wouldn't that probably have made some impression upon your mind. A. I don't know ; it is a good while ago, and I never called it to my mind at all until this came up.

Q. A paper being signed in the room, if there had been no table, no chair for any one to sit on, nothing like an inhabited house, would not you probably have recollected it? A. I don't say there was nothing there. I say I don't remember what was there.

Q. I was supposing that under the circumstances of this paper being signed there in your presence, if there had been no table there, and no chair to sit on, and no carpet and no furniture in the room would not you probably have recollected it? A. I can't say that I should.

By Mr. NILES :

Q. How long were you there. A. I could not tell.

Q. About? A. A very few minutes I should think, I don't know.

Q. Did you see Judge Barnard read the papers? A. I think I did ; yes sir.

Q. All of them? A. I could not say how many papers there were ; I don't know. I saw him have the papers.

Q. Did you see him turning them over slowly, and reading them leaf by leaf? A. I should say from the best of my recollection that he did.

By Mr. STICKNEY :

Q. Then the only points in that entire evening that you remember are the fact that you saw Mr. Sterling, went into the house with him spoke with him, and saw Judge Barnard sign these papers ; those are the only points that you remember out of the occurrences of this whole evening, are they? A. Well, anything that had anything to do with this case.

Q. What else do you remember? A. I presume I went in the Opera House, as was my habit.

Q. Do you remember that? A. I would not swear to it ; no sir.

Q. What else in that entire evening do you remember? A. Well, nothing particularly.

Q. Now, then, how did you happen to be standing there? A. Well, it was customary to be standing about there.

Q. And as to any particular occasion of your standing there at that time, that you don't remember? A. No sir.

Q. Did you have any instructions from Mr. Fisk or from any one

else, in regard to your interview with Sterling, or in regard to any of the occurrences that evening? A. No sir.

Q. You have no recollection on that point? A. No sir.

Q. Did you have any conversation with Judge Barnard on that evening? A. I don't remember of having any.

Q. Will you swear that you did not? A. I suppose I spoke to him, and extended the common civilities; I don't remember anything else.

Q. You have known Judge Barnard for some time, have you? A. I have known the Judge by sight.

Q. For how long? A. I should think two or three years.

Q. For some time before this? A. Yes sir.

Q. You bowed to him when he passed you that evening? A. Yes, I think so.

Q. And you had been in the habit of seeing him occasionally? A. I have seen him occasionally, yes sir.

Q. Had been in the habit then? A. Yes sir.

Q. How many times had you met him before, at 313? A. I don't think I ever met him there.

Q. When, before this last time had you met him at 359 West Twenty-third Street? A. Never to my recollection.

Q. In what place had you met Judge Barnard?

Mr. NILES:

Do you mean about this time.

Mr. STICKNEY:

At any time.

Mr. NILES:

I submit that that is hardly worth while to go back to his childhood.

Q. About this time, at what place had you met him? A. I don't remember of any time particularly, about that time.

Mr. NILES:

Along at any time during this litigation of the Albany and Susquehanna? A. I don't remember seeing him at any time, about that time.

Q. I ask at what places? A. Well, I could not tell, sir; I don't remember of seeing him.

Q. On that point you have no recollection? A. No sir.

By Mr. NILES:

Q. Do you mean to say you remember having seen him only on this one occasion during the whole period of this Susquehanna litigation? A. I could not swear that I had not.

Q. To the best of your recollection? A. To my best recollection, I don't remember when I saw him.

By Mr. STICKNEY :

Q. Do you remember where you had seen Judge Barnard at any time prior to this evening? A. No sir, I do not.

Q. You have no recollection on that point? A. No sir.

Q. Do you remember with whom you had seen him, at any time, about this time? A. No sir.

Q. What was your answer to the last question? A. I said that I did not remember of having seen him.

Q. Do you remember where you had ever seen him in company with Mr. Fisk? A. Where I had *ever* seen him?

Q. Within four or five months of this time, or ever? A. No, I don't remember; I have seen him in Mr. Fisk's box at the Opera House.

Q. Do you remember any other place? A. I think I have seen him in the office up-stairs.

Q. Erie Office? A. I think so.

Q. Do you remember any other place? A. I don't call to mind any.

Q. How often did you see him in either of those places, in Mr. Fisk's box or in the Erie office? A. I have seen him there seldom since I have ever known him.

Q. You mean that you don't remember seeing him very often? A. No, sir.

Q. When were you subpoenaed to attend here? A. This morning.

Q. How long since you have seen Mr. Sterling? A. I have not seen him that I remember since the time of Col. Fisk's funeral?

Q. Are you positive on that point? A. I am very near positive.

Q. With whom have you talked with reference to any of these Susquehanna matters, within the last ten days, or within the last fortnight? A. With no one that I remember

Q. Will you swear to that? A. Yes, sir.

Q. Have you been talking with Mr. William H. Morgan this morning? A. Well, I met him outside.

Q. Have you been talking with him? A. I was talking about the current affairs of the day.

Q. Did you mention to him the fact that you had been subpoenaed as a witness here? A. I presume I did, sir.

Q. Do you state positively that nothing was said between you as to the matters you have here testified to, or as to any of them? A. No, sir; I don't think I said anything.

Q. Will you swear positively to that? A. I would not swear positively, but I don't think I did.

Q. You cannot have forgotten within this short space of time, on that point? A. Well, I don't know; a man is not supposed to remember everything he says or hears.

Q. How long ago was it that you talked with Mr. Morgan? A. It was before he came in here.

Q. Within two hours? A. Yes, sir.

Q. Can you not state positively whether or not you and Mr. Morgan

then had any conversation about these Snsquehanna matters, or whether they were mentioned between you? A. I don't think anything more than that we were subpoenaed.

Q. Will you swear positively that nothing else was mentioned in relation to them? A. I would not swear, but I don't remember anything.

Mr. NILES:

Q. Did Mr. Morgan talk with you about these facts; that is, what the fact was with regard to any of these matters? A. No, sir; I don't think he did.

Q. Didn't he ask you anything about the facts? A. No, sir.

Q. Nor you him? A. No, sir.

By Mr. STICKNEY:

Q. Have you spoken with any one within the last ten days in relation to these Susquehanna matters? A. No, sir.

Q. That you can state positively? A. Yes, sir.

Q. Can you explain how Mr. Fisk could have told Mr. Thomas G. Shearman that Judge Barnard was, on this evening, which we have mentioned, visiting at the house of a friend in the neighborhood, unless Mr. Fisk had seen Judge Barnard in No. 313, before stating that to Mr. Shearman?

Mr. CURTIS:

We submit to the Committee whether that question is to be put. It seems to be founded on two assumptions.

Mr. NILES:

It seems to me that that is trying to ascertain how good a reasoner he is, rather than to get at the facts.

Mr. PRINCE:

Put that question in a shape that will bring out a fact.

By Mr. STICKNEY:

Q. Do you know anything in fact on which Mr. Fisk could base this statement, that Judge Barnard was in the neighborhood? A. No, sir; I could not swear to it.

Q. Don't you know any statement that he had received in regard to it? A. No, sir.

Q. On any telegram, or letter, or anything? A. No, sir.

Q. Do you mean to say that you have not the slightest idea why Fisk should give that information? A. I don't know anything about it, or what he was there for, at all.

Cross Examination by Mr. CURTIS:

Q. Have you seen Judge Barnard since the 6th of August, 1869, anywhere, until you saw him to-day in the hall here in this hotel? A. I could not swear that I had.

Q. Have you any recollection of seeing him to speak to him, at any time prior to to-day, since the 6th of August, 1869? A. Nothing more than to say, "How do you do?" or something of that kind.

Q. Was there anything more than that passed between you to-day? A. No, sir.

By Mr. ANDREWS:

Q. Have you had any conversation with anybody connected with this case since you were subpoenaed here as a witness? A. No, sir; only as I said to Morgan that I was subpoenaed.

Q. Have you seen me before, or Mr. Curtis before in your life? A. No, sir; not until to-day.

Q. You live in Brooklyn, don't you? A. No, sir; I live in New York.

The Committee of the Bar Association offer in evidence from the printed case on appeal to the Court of Appeals in the matter of application of John A. Duff, as Receiver of the Olympic Theatre, for authority to lease the same, the order to show cause made by Judge Barnard on May 15th, 1868, and all the other papers contained in the book, down to, and including the order made by Judge Barnard, dated August 3d, 1868, appearing upon page 50 of the printed case.

[Marked charge 8 l.]

Mr. PARSONS:

I also wish to call the attention of the Committee to the opinion of the Court of Appeals, on the final appeal to that Court from the order made by Judge Barnard in that proceeding. The opinion is reported in the 41 of Howard's Practice Reports, at page 350.

JOHN I. DAVENPORT, a witness, called on behalf of the prosecution, sworn, and examined by Mr. PARSONS.

Q. Are you a Commissioner of the United States? A. I am, sir.

Q. Appointed by what Court? A. Circuit Court of the United States.

Q. How long have you held that position? A. I think, about a year and a half, in that neighborhood.

Q. Do you remember the appointment by Congress of a committee to investigate frauds alleged to have been perpetrated at the fall election in the year 1868, in the city of New York? A. I do, sir.

Mr. CURTIS:

That brings up the question about which we have once or twice said something to the committee, and we now wish to say more?

Mr. PARSONS:

Mr. Davenport is merely examined for the purpose of laying the foundation for the introduction of secondary evidence of a writ of *habeas corpus* with the order of Judge Barnard indorsed upon it

discharging certain persons who had been arrested upon a charge that they were guilty of a violation of the Registry law, immediately preceding the election, when Judge Barnard was elected Judge of the Supreme Court. We have taken the testimony of Capt. James Irving, the officer of police who had the men in charge who were discharged, and the testimony of Mr. Acton in reference to his action, and Mr. Davenport merely comes here for the purpose of accounting for the loss of the original papers that we may use copies to complete the case.

Mr. STRAHAN:

My opinion about this matter is this—that until the committee decide the question we ought not to take any testimony; but if this witness is going to swear to an unimportant matter, which can do no possible harm, even if it should be published entirely in the newspapers, we consent that he be examined, with the understanding that nothing else is done in that direction until a determination is made by the committee.

Mr. PARSONS:

Were you attached in any way to that committee, or did you participate in any way, and if so, in what way, in the investigation conducted by that committee? A. I was the attorney of the Union League Club, who asked for an investigation, and was also the clerk of the committee.

Q. Was James Irving previously attached to the detective department of the police of the city of New York, examined as a witness before that committee? A. He was, sir.

Q. Did he give testimony in respect to the discharge on October 31st, 1868, by Judge Barnard of some men, seven in number, who had been arrested, charged with attempting to illegally register themselves as voters? A. Yes, sir; both he and officer Coyle.

Q. Did he produce upon that examination the original writ of *habeas corpus*, with the discharge by Judge Barnard indorsed upon which those men were discharged by Judge Barnard? A. Yes, sir.

Mr. NILES:

Do you intend to prove the contents of the writ, and the discharge by this witness or only the loss?

Judge BARNARD:

I admit that on the 31st of October, 1868, a writ of *habeas corpus* was handed to me by Capt. Irving, purporting to be and which I believe to be the original from which this copy has been taken, and that I admit the signing of the order discharging the men therein named.

Mr. PARSONS:

Capt. Irving didn't personally see Judge Barnard; his statement

was that the writ was handed to the servant girl, and by her taken up to Judge Barnard.

Judge BARNARD :

Then I will make this addition, that all that Capt. Irving testified to was true, provided Mr. Howe and the servant girl don't say that he was mistaken in seeing Judge Barnard.

Mr. PARSONS :

If Judge Barnard will admit this, it will answer the present purpose; that he allowed a writ of *habeas corpus* for those men; that upon that writ the men were brought to his house, and that the indorsement upon that writ purporting to be signed by him, was in point of fact signed by him, and that the writ with that indorsement signed by him, are correctly copied in the report of the Congressional committee.

Judge BARNARD :

I have never seen that report, but I have no doubt it is true.

The WITNESS :

It is true, except that the writ is not correctly printed in the report. There are typographical errors.

Judge BARNARD :

I admit that I signed that order at that time at my house.

Mr. STRAHAN :

Mr. Parsons, does this admission cover your object?

Mr. PARSONS :

With one single exception. I understand that the admission suggested in my statement is made. That is so, is it not?

Mr. ANDREWS :

Yes; what is the other?

Mr. PARSONS :

The other is to show that the indorsement discharging the men signed by Judge Barnard, with the exception of the signature, is in the handwriting of William F. Howe.

Judge BARNARD :

That I could not tell, because I have no recollection of what occurred four years ago.

Mr. NILES :

There is, of course, no objection to his answering that.

Judge BARNARD :

No, sir.

By Mr. NILES :

Q. Was that indorsement, except the signature, in the handwriting of Howe? A. I am not sufficiently familiar personally with Mr. Howe's writing to say that it was, but it was so testified to be before the Congressional Committee.

By Judge BARNARD :

Q. Have you the slightest idea of my writing, if I should hand it to you? A. Of your signature?

Q. No; I mean of the date and the signature, if I should hand it to you. Can you tell whether it was the same—mine or somebody's else? A. I know your signature.

Q. I mean the writing of it? A. I know what the language is.

Q. I can write it for you?

Mr. PARSONS :

That will not be necessary, because the indorsement and the signature were in a different handwriting.

Judge BARNARD :

At the Court I always signed with quills, and at the house with pens.

Mr. PARSONS :

Q. Do you know the signature of Judge Barnard? A. Yes, sir.

Q. Was his name in his own handwriting? A. Yes, sir.

Q. And was the indorsement to which his name was appended in a different handwriting? A. Yes, sir.

By Judge BARNARD :

Q. "October 31st, 1868," is in a different handwriting from mine? A. No; I don't say that the date was in a different handwriting from yours, but the words were. These were almost exactly the words: "There being no return to the within writ, I order the prisoners discharged." Those words were in a different handwriting, and those you will find in the testimony. I am very certain that Mr. Howe wrote those words that Captain Irving swore.

Judge BARNARD :

I have no doubt that is true. I very seldom wrote on the back of a writ anything, except when a man was brought from the Penitentiary to be discharged, and then I put in, "The District Attorney consenting," in my own handwriting. (To the witness.) This issuing of the *habeas corpus* and the discharge, and the running of Judge Barnard for office in 1868, was all finished and ended before the 1st of January, 1869, when he was sworn into his new office? A. Yes, sir.

Adjourned to Monday, March 18th, at 10 A.M.

NEW YORK, March 18th, 1872.

*In the matter of charges preferred against Hon. Geo. G. Barnard.
Before Assembly Committee.*

JAMES H. COLEMAN recalled, and examined by Mr. Parsons.

Q. Do you remember the case of the Glenham Hotel? A. Yes, sir; I remember such a case.

Q. Did Judge Barnard appoint a Receiver in that case? A. I believe he did, sir.

Q. What was the title of the suit or proceeding in which Judge Barnard appointed a Receiver? A. I don't know, sir.

Q. Who was the Receiver? A. I think Mr. Ingraham was appointed receiver.

Q. D. P. Ingraham Jr.? A. Yes, sir.

Q. Did you make the application to Judge Barnard for the appointment of a Receiver in that case? A. No, sir; I did not.

Q. What did you have to do with that case? A. Nothing whatever.

Q. Do you know Mr. D. P. Peters? A. I have seen him.

Q. What had he to do with the case? A. I know not.

Q. Did you see him in connection with the case, or proceeding in which the receiver was appointed? A. I never exchanged a word or syllable of conversation with Mr. D. P. Peters in reference to that suit in my life.

Q. Who is Mr. D. P. Peters? A. An hotel proprietor—or he was.

Q. Where had you known him prior to the appointment of the Receiver of the Glenham Hotel? A. I had seen him at his hotel, corner of Thirteenth Street and Fifth Avenue. Judge Porter boards there, and I was in the habit of calling to see the Judge frequently, and I met him at the desk as I would go in.

Q. Do you know whether he had anything to do with the Glenham Hotel? A. I had heard that he had something to do with it, but what, I don't know.

Q. Do you know who were the proprietors of the Glenham Hotel prior to the appointment of the Receiver? A. No, sir.

Q. Had he, so far as you know or understand, anything to do with the application for the appointment of a Receiver, or was he interested in any way, and if so, in what way, in the proceedings in which a Receiver was appointed? A. I know there was such a suit. I had heard of it, but in what way he was connected with it, I don't know.

Q. Was he connected with it? A. I can not say of my own knowledge.

Q. What information have you on the subject? A. I have no information on the subject; I was not connected with the suit in any way, or in any manner.

Q. Was there nothing whatever done by you in, or in connection with that suit or proceeding? A. Not the slightest thing in the world by me.

Q. Did you never see Judge Barnard in reference to it? A. Not a syllable of conversation has ever taken place between Judge Barnard and I in reference to that suit.

Q. Did you not obtain an order of some kind from Judge Barnard, in connection with that proceeding? A. Not an order.

Q. Did you ever receive a fee from any party to that litigation? A. No, sir.

Q. Do you mean that you never did any professional work in connection with that proceeding? A. Not the slightest.

Q. Do you know a man by the name of Miller as connected with that litigation? A. No, sir.

Mr. CURTIS :

Under what specification does that Glenham Hotel case come?

Mr. PARSONS :

According to the intimation we had it would come under the last specification or charge, and we propose to present it under that. We were informed that Mr. Coleman had procured the appointment of a Receiver.

Q. Do you remember the appointment by Judge Barnard of a Receiver of the Farmers' and Mechanics' Life Insurance Company? A. Yes, sir.

Q. Who was appointed, by Judge Barnard, Receiver of that company? A. I was.

Q. When? A. I cannot give you the date, sir; about a year ago, I should judge.

Q. What was the title of the suit or proceeding in which the Receiver was appointed? A. I cannot recollect the title of the suit.

Q. Was it a suit, or was it a special proceeding? A. That I don't know.

Q. Who made the application upon which a Receiver was appointed? A. The application, I believe, was made by the Attorney-General.

Q. On whose relation? A. I cannot inform you on that point.

Q. What was your first knowledge of that proceeding? A. The bringing of the order to me.

Q. Who brought the order to you? A. Mr. E. R. Meade.

Q. Has not Mr. Meade acted very frequently in connection with the procurement of receiverships for insurance companies in the city of New York? A. I cannot say yes; I know he has had something to do with suits of that character.

Q. Was this the only proceeding of which you knew, where he represented the application? A. It is the only proceeding that I remember of.

Q. Was the Farmers' and Mechanics' Life Insurance Company the

only insurance company of which you were appointed Receiver by Judge Barnard? A. The only one.

Q. Have you been appointed by Judge Barnard Receiver of other corporations? A. Not of any corporation other than this one. There is a bare possibility I may have been, but I am almost positive—almost certain.

Q. How many times have you been appointed Receiver by Judge Barnard?

Judge BARNARD:

As quick as I get the report from Judge Cardozo we can tell; that is all down, all certified by the County Clerk; both the Referees and Receivers all certified to.

The WITNESS:

Four times, I should judge, in all.

Q. Through how many years run these four appointments?

A. From 1861 to 1872.

Q. Do you mean that the first was in 1861? A. I don't remember when the first one was; I think the first one was about 1863.

Q. You mean, then, from the beginning of the world to the present time? A. Yes, sir; from the beginning of the world to the present time.

Q. Who were the counsel on either side of the suit or proceeding in which you were appointed by Judge Barnard Receiver of the Farmers' and Mechanics' Life Ins. Co.? A. The Attorney General, I believe, was for the plaintiff.

Q. Represented by Mr. E. R. Meade? A. E. R. Mead had something to do with it, and Mr. Orlando L. Stuart on the other side.

Q. Has your receivership of that company terminated? A. Yes, sir.

Q. Did you file your accounts? A. Yes, sir.

Q. And was there an order confirming them? A. Yes, sir.

Q. Made by whom? A. By Judge Barnard.

Q. Can you give us the date of the order? A. Last summer, I think.

Q. Was your report put upon file? A. Yes, sir.

Q. In the County Clerk's Office? A. In the County Clerk's Office.

Q. Did it contain an account of your proceedings, and of the money which passed through your hands as Receiver? A. Yes, sir, all.

Q. Was there a re-insurance in that case? A. Yes, sir.

Q. Effected by whom? A. By the Empire Life Ins. Co.

Q. Who procured that re-insurance, or made the arrangement in reference to it? A. Mr. Meade.

Q. Do you mean that Mr. Meade acted for you in the transaction? A. Acted for me; yes, sir.

Mr. CURTIS:

Q. Do you mean the re-insurance of all the outstanding policies?

Mr. PARSONS :

So I understand ; is that the fact ? The WITNESS : A. Yes, sir.

Q. A re-insurance of all the outstanding policies effected by one company ? A. Yes, sir.

Q. And the arrangement being made by Mr. E. R. Meade ? A. Mr. E. R. Meade.

Q. Did you conduct any part of the negotiations which resulted in that re-insurance ? A. No part of it.

Q. Was there an order directing or authorizing you to make that re-insurance ? A. There was.

Q. Granted by whom ? A. Granted by Judge Barnard.

Q. Can you state when ? A. Some time in the spring of 1871.

Q. Upon what papers was that order made ? A. Upon my petition setting forth what had been done and setting forth the negotiations had in the matter.

Q. Is that petition on file ? A. Yes, sir.

Q. With the order made by Judge Barnard upon it ? A. Yes, sir.

Q. Were you present upon the motion made upon your petition before Judge Barnard ? A. I am not certain whether I was or not.

Q. Who made the motion ? A. It was made by Mr. Meade.

Q. Did Mr. Meade act as your counsel ? A. Yes, sir.

Q. Represented you as Receiver ? A. Yes, sir.

Q. Was that motion opposed ? A. No, sir ; it was not opposed.

Q. Are you quite sure about that ? A. Very certain it was not opposed ; positive about it.

Q. Can you now recall whether you were present or not ? A. I think I was present.

Q. Was there an order to show cause why the appointment of the *ad interim* Receiver should not be made permanent in that proceeding ? A. I think so ; I think I was temporarily appointed as Receiver with an order to show cause ?

Q. Were you present at the motion when the appointment of a temporary Receiver was made permanent ? A. No, sir ; I was not.

Q. Before whom was that motion made ? A. Before Judge Barnard.

Q. Do you know whether or not that motion was opposed ? A. That I don't remember.

Q. You say that there was an order authorizing or directing the re-insurance effected by you with the Empire Mutual Insurance Company ; was that order obtained before or after the arrangement had been made for the re-insurance ? A. It was obtained after the arrangement had been made.

Q. Was there not a negotiation on the part of the officers of the Farmers' and Mechanics' Life Insurance Company, for a re-insurance on more favorable terms with another company ? A. Not to my knowledge ; I had not heard of it.

Q. Where was the office of the company ? A. On Broadway, corner of Pearl Street.

Q. Where did you make your office as Receiver? A. I had my office as Receiver there for a month or two until the matter was closed—not until it was closed; I think until about April.

Q. Who attended to the business of the receivership? A. Edward Kavanagh.

Q. Who is he? A. A young man of my acquaintance.

Q. Had he any previous connection with the company? A. No; I retained two or three of the clerks there also.

Q. Did Mr. Kavanagh represent you at the office? A. Yes, sir.

Q. In permanent charge? A. Yes, sir.

Q. Do you know Mr. Warren S. Peck? A. I think I saw such a man there; I think he was an officer of the company.

Q. Did he continue at the office of the company after you were appointed Receiver? A. I am very certain he did not.

Q. During how many days after your appointment did you see him at the office of the company? A. I don't remember ever having seen him there after my appointment.

Q. Where did you see him? A. I never have seen him since the day I think I was appointed Receiver—the day I entered into possession until this hour.

Q. What amount of assets of that company passed through your hands as Receiver? A. I think after the re-insurance was effected there was about 9 or \$10,000 left, and that, with the sale of the property, I think amounted to about \$11,000 and odd dollars.

Q. What amount was paid for re-insurance? A. I could not recall now. I cannot remember. It all appears by the record—it all appears by the order.

Q. Was it not in the neighborhood of \$93,000? A. I think it was in that neighborhood.

Q. What was the ground upon which a Receiver was appointed in that case? A. I really don't know. I think it was because of the insolvency of the company.

Q. What disposition was made of the \$11,000 surplus, after the re-insurance? A. I paid various expenses—paid rent, paid Mr. Kavanagh for services rendered, paid clerks retained there, paid newspaper bills, paid fees to the lawyer for the company.

Q. Do you mean Mr. Meade? A. And Mr. Meade? No; the lawyer for the company was Mr. Orlando L. Stuart. I paid Referees' fees, and paid my own fees.

Q. Was anything left? A. There was some \$2,800 or \$3,000, I think.

Q. What was done with that? A. A dividend was made to the creditors of the company—10 per cent.

Q. Were these payments, of which you speak, reported in your account and confirmed by the order of Judge Barnard? A. Yes, sir.

Q. Do you remember the amount paid Mr. Meade, and so confirmed? A. I think about \$1,200, \$1,500.

Q. Are there any papers of which you know in that proceeding which are not on file in the office of the County Clerk? A. There

are no papers that I know of in that proceeding that are not on file in the County Clerk's office.

Q. Have you no memorandum here which will give the title of the proceedings? A. No, sir.

Q. Have you ever been Referee, appointed by Judge Barnard in any suit or proceeding where Mr. Thomas C. Fields was the counsel on either side? A. I cannot recall any case.

Q. Do you not remember any case in which Mr. Fields has appeared before you as Referee? A. I don't remember Mr. Fields ever appearing before me in his life as Referee, or appearing before me in any case where I acted as Referee.

Q. Do you not remember any case in which Mr. Fields' office represented one side or the other? A. I believe Mr. Henry Parsons had two or three cases before me.

Q. Can you tell the title of them? A. I cannot.

Q. Can you remember the title of either? A. They only had three or four cases before me, and I cannot recall the title of any case.

Q. Do you remember one case where the claim was prosecuted by or for a Manhattanville Stage proprietor? A. I had such a case before me. I remember it.

Q. Who was the Manhattanville Stage proprietor? A. That I don't remember.

Q. What was the nature of the case? A. I cannot recollect about the case, now.

Q. Against whom was the suit? A. Against the city.

Q. The City of New York? A. Yes, sir.

Q. Have you not here your register which would give you the title of the case? A. I think I have, sir.

Q. We should be glad to get the title of that case. Were all the references in the cases, where Mr. Fields represented the plaintiff, references against the city? A. Yes, sir.

Q. Within what length of time were those references? A. Well, I don't remember. I think they were about the same time, all of them.

Q. And about when was that? A. I cannot tell you; if you can give me a clue of the names of the plaintiffs, I can tell you right away, or give me the year.

Judge BARNARD :

Here is a list of references; it runs back to 1867.

Q. I will ask you this—have you enabled yourself by your examination of your register, which you have made, or in any other way, to give the title of the suits against the city, in which you were Referee, Mr. Henry Parsons being the plaintiffs' attorney? A. I have from the list of references made up by the County Clerk.

Q. What was the name of the plaintiff in the case of which you have spoken, where the plaintiff, you say, was a Manhattanville Stage proprietor? A. Riblet.

By Mr. CURTIS :

Q. What is the first name ? A. That is not stated.

Judge BARNARD :

George W. I think.

Q. When was that case referred to you ? A. (Referring to the book). I think between the 6th and the 16th of January, 1871.

Q. Do you know by whom the order of reference was made ? A. No.

Q. By what Judge, I mean ? A. No, I do not. (Referring to the document) by Judge Barnard.

Q. Was that suit tried before you as Referee ? A. Yes, sir.

Q. Did you make a report ? A. Yes, sir.

Q. And was judgment entered upon your report ? A. Yes, sir ; so I have been informed.

Q. Does the suit appear in your register ? A. It does not.

Q. Did you keep a register of you references ? A. Well, I supposed that all the references that came into the office went into my register. To day is the first time I have looked at the register, in a year.

Q. Have you, since the 1st of January, 1870, had referred to you any other suits against the city ? A. Other than those that I have mentioned ?

Q. I mean other than the three in which Mr. Henry Parsons was the plaintiffs' attorney ? A. No, sir.

Q. Do you know Mr. Henry Parsons ? A. Yes, sir.

Q. Do you know that he is the attorney who does the attorney business of the office of Mr. Thomas C. Fields ? A. Well, I can't say that, I don't know that, I know he has an office in connection with Mr. Fields.

By Mr. CURTIS :

Q. Do you know the reason why you were appointed Receiver in the case of the Farmers' and Mechanics' Insurance Co. ? A. I have already stated that my recollection is that the application for the receivership, was based upon the fact of the alleged insolvency of the Co.

Q. I didn't ask why a Receiver was appointed, but I ask why you yourself, was appointed Receiver ; any special reason for it ? A. I know no special reason why I was appointed.

Q. Did you ever apply to Judge Barnard, or ask Judge Barnard to refer that, or any other case to you, in the world ? A. I have never asked Judge Barnard to refer a case to me in the whole course of my life.

Q. That corporation was wound up under that suit, was it not. A. The corporation was wound up in that suit.

Q. The policy holders received policies of re-insurance from another Co. in place of their old policies ? A. Yes, sir ;—let me qualify my answer in relation to my asking Judge Barnard to appoint

me Referee. In a few cases, attorneys have brought decrees to me, in foreclosure cases, and have asked me to get the decree signed, and to ask Judge Barnard to appoint me—three or four cases.

Q. Have you not in a great many instances within the last three years sent back references made to you? A. I have sent back a large number of references to Judge Barnard.

Q. Haven't you sent back more than you have acted in—declined to act in more than those that you have acted in? A. No; I think I have acted in more than I have sent back; from the list of references there, it will appear, that one year, I think, there were 70 references sent to me. My references were principally, with very few exceptions, to sell in foreclosure suits, and in those suits two orders of reference have been made; one to compute the amount due and immediately upon the presentation of my report; a decree would be made perhaps in the same case, referring it to me as Referee to sell, so that in fact when two references were sent to me, there was but one in point of fact.

By Mr. TILDEN :

Q. When you speak of 73, do you mean to count two in each case, or 73 separate cases? A. (Referring to document.) In 1870 Judge Barnard sent me 66 references.

Q. In that year? A. In that year.

Q. That is 66 cases? A. 66 cases.

Q. In each of them ordinarily there were two orders? A. Two orders, and really instead of being 66 references, there really were but 33, an order being made to compute, and an order being made to sell afterwards.

Q. Then you did not answer the question accurately? A. I meant to answer it accurately.

Q. I ask if there was 66 separate cases, you began your answer wrong? A. I see—you are right.

Mr. ANDREWS :

Q. You mean to say there were 33 separate cases? A. Yes, sir, there were 33 cases. The references to me being nearly all, with very few exceptions—foreclosure references—foreclosure and sale.

By Mr. PARSONS :

Q. Havn't you been Referee in partition suits, where Judge Barnard made the order? A. Yes, sir, I have been.

Q. Have you ever rejected references in partition or foreclosure suits? A. I have in two or three foreclosure suits, and requested the attorneys to apply for the appointment of another Referee. In one case I remember where Mr. John Hayes was attorney, he asked me to do him the favor to go on with the proceedings, as it would embarrass him and give him extra trouble, etc.—a foreclosure suit; I have only declined two or three of them.

Q. Have you declined any foreclosure references, when the order

had actually been made referring the suit to you? A. Yes, sir; a case where John Hayes was the plaintiff's attorney, but I afterwards went on at his request and sold.

Q. Can you be sure, that in foreclosure or partition suits, the Chambers minutes from which that list in your hand is made up, show two orders of reference in one suit? A. Well, not in partitions—yes, in partitions the County Clerk's minutes should show two orders; a reference on the title, and a reference to sell. In foreclosure suits, a reference to compute and a reference to sell.

Q. Do the County Clerk's Chambers minutes show references to sell in either partition or foreclosure suits? A. Well I really don't know of my own knowledge. I presume so, my books contain an entry of every foreclosure suit I have ever had.

Q. Can you of your own knowledge say that there were not as many as 70 separate cases in which references were made to you by Judge Barnard in 1870? A. I most surely can (referring to document); I suppose there were 70 separate cases, and two orders made in each case.

Q. Have you any knowledge on the subject? A. I have this knowledge, that I have received quite a number of orders to compute, and afterwards I would receive in the case, an order to sell, appointing me Referee to sell.

Q. Have you any knowledge that both those orders appeared in the Chambers minutes, from which is made up the list which you have? A. I have no knowledge as to this list at all.

Q. Have you any knowledge as to the number of separate suits in which references were ordered to you by Judge Barnard in 1870? A. I can give you the suits by referring to my register.

Q. And without that reference, have you any knowledge or recollection? A. No, without reference to the register, I have no knowledge or recollection.

Q. Can you without reference to your register, state the number in either '69, '70, or '71? A. No, I could not; I should not think I had in any one year to exceed 20 sales; that is my recollection. Every foreclosure is entered there, and also a statement of the amount received and disbursed by me.

Q. Can you state the number of partition suits in which you have been Referee, where the order referring the suit to you was made by Judge Barnard? A. Since when?

Q. Since January 1st, 1869? A. Yes, sir; I think I can state them.

Q. You may if you please? A. Hull *vs.* Hull, Wiley *vs.* Hopper, Clemens *vs.* Clemens. I think I have stated all. I have had about four or five partitions, all told, and in 1869 about three.

Q. Can you give the titles of those in 1869? A. I cannot recollect the titles.

Q. Was Blount *vs.* Blount a partition suit? A. Blount *vs.* Blount was a divorce suit.

Q. Was Byrne *vs.* Byrne a partition suit? A. I don't remember

that suit. I don't think that was in the office. There are a great many references down there that I have never had.

By Mr. CURTIS :

Q. Can you state now the amount of income which you have received on references made to you by Judge Barnard in the years 1869, 1870, and 1871, the aggregate amount of income which you have received from references made to you by Judge Barnard in those years? A. Not to exceed in my opinion and best judgment \$10,000.

Q. In those three years? A. In those three years.

Mr. CURTIS :

I wish to inquire of the gentlemen of the prosecution whether it is intended here at any time to charge or insinuate that any pecuniary benefit ever resulted to Judge Barnard from these receivership or references, passed through the hands of Mr. Coleman. I want a frank statement, because I want to examine Mr. Coleman on that matter.

Mr. PARSONS :

I suppose you can examine Mr. Coleman without a statement from us in regard to that matter.

Mr. CURTIS :

I want to know whether you mean to make any point of that kind, or have the committee drawn any such inferences?

Mr. PARSONS :

We do not wish to make any statement that will preclude our going into an inquiry of that kind.

Mr. CURTIS :

I understand, then, that I cannot have the answer that I want, and therefore I will ask the question.

Mr. PARSONS :

This, we will say, that if we intend to make any such charge, we will state it both to you and to the committee :

Mr. CURTIS :

Can you not state it now?

Mr. PARSONS :

No, we cannot state it now. If information shall be furnished us, which, in our judgment, calls upon us to prosecute an inquiry of that kind, we shall be called upon to do so.

Mr. CURTIS :

Then I will postpone it.

The WITNESS :

I would like to have the question put to me, and I will tell you, Mr. Curtis, I am not very well. I am in ill health, and I have business that will call me out of town, I think, on Tuesday or Wednesday, to be absent four or five days, and I would like, therefore, if you have any questions of that character to put to me, to do so now. I think it is due to me, as a witness, that the question should be propounded to me. I am here to answer it.

By Mr. CURTIS :

Q. Well, Mr. Coleman, I will ask it. Did you ever pay to Judge Barnard in your life, any money that you had not previously borrowed of him, or that you did not owe him for some proper consideration?

A. I most solemnly swear, that I have never directly or indirectly given to Judge Barnard one single solitary dollar of any fees ever received by me, so help me God—never! I have divided fees received by me as Referee. I have paid Mr. Fabb and Mr. Shaw, who have had charge of business of that character for me. I have paid them never less than 33 per cent. of what I received, frequently 40, and for the last two years, I have paid Mr. Fabb, I should say, 60 per cent. of what I have received as Referee.

By Mr. TILDEN :

Q. Who is Mr. Fabb? A. Mr. Fabb is a clerk.

Q. Clerk in your office? A. Yes, sir.

Q. Who is the other gentleman, your clerk? A. Mr. John C. Shaw is not a clerk in my office. He is in the same building. He was formerly connected with me.

Q. You say you divided fees that you received as Referee: You divided with these gentlemen? A. I paid them for services rendered for me, in the matters referred to me.

Q. When you say that you have not received exceeding \$10,000 in three years—I think you said? A. Yes, that is my opinion, and that is my best judgment. I don't think I have received to exceed that amount.

Q. To cases of what character do you refer? A. In cases pending before me as Referee.

Q. All cases whatsoever? A. All cases whatsoever referred to me as Referee.

Q. Do you mean to state, then, the gross amount paid to you in the first instance, or the net amount after your division and deduction. A. I mean to state the gross amount.

Q. The whole amount paid by the parties interested in the references? A. Yes, sir; I firmly believe—it is my opinion that I have not received to exceed, all told, from references, from 1869 to this hour to exceed \$10,000. I have made no calculation, but most of my references have been foreclosure, where the fees in 1869 and '70 were at the rate of \$50.00 in a case, and since then \$100.00, with the exception

of two or three cases where extraordinary labor was performed, and in one case where I think \$250 was paid to me.

Q. How many cases do you think there have been during the whole period ?

Mr. CURTIS :

There is a schedule of them here.

Mr. TILDEN :

How many are there ?

The WITNESS : Mr. Curtis, there is a statement there it is true, but there were a great many of those references I never heard of, which never came to me.

Mr. CURTIS :

The order changed afterwards ? A. I presume so. I know there are cases there that don't appear in my book.

Mr. TILDEN :

What is the number that appears on the schedule ?

Mr. CURTIS :

I have not looked to see ; it was all made out by the County Clerk.

By Mr. NILES :

Q. Did you ever understand, or have any reason to believe, that any part of this money, that you gave Fabb or Shaw, went for the benefit of Judge Barnard in any way ? A. I am very positive, and very certain on that point, that none of that money went to Judge Barnard. I think I will swear positively that no portion of that ever went to Judge Barnard.

Q. The number stated in the schedule for 1869, 1870 and '71—these three years—amounts to 146 ? A. Yes, sir.

Q. You think that the gross amounts received in all these cases by you was not over \$10,000 ? A. I certainly do not think the gross amount received by me in all these cases exceeded \$10,000.

Q. That would be something like sixty or seventy dollars a piece ? A. Yes, sir.

By Mr. CURTIS :

Q. On the average ? A. On the average.

By Mr. ANDREWS :

Q. A good many of these cases never go on ? A. In a large number of cases the fees do not exceed five or ten dollars.

By Mr. CURTIS :

Q. Did you ever practice as a counselor before Judge Barnard ? A. Yes, sir.

Q. When ? A. In 1861, '62, '63 and '64. I had before him quite a

number of orders in supplemental proceedings for Mr. Caggér, of Albany.

Q. Have you, within the last three years, appeared before him as an attorney and counselor, in 1869, '70 and '71? A. In one case I have appeared before him. I moved for a reference in the case of Wallace against somebody; (to Mr. Fabb), do you remember the case? Mr. Nelson was on the other side.

Mr. FABB:

Wallace against Paulding.

Q. Homer A. Nelson was opposed to you? A. Mr. Nelson was on the other side; that is the only case I remember. I am very certain there was no other case.

Q. Have you ever taken a retainer from parties or attorneys in any case pending before Judge Barnard, or in any proceeding in which you were not yourself already either counsel or attorney? A. I can remember of no case. I am almost positive. I am almost certain that I never have accepted a retainer in any such case.

Q. Have you ever received a retainer or compensation from anybody for speaking to Judge Barnard about a case out of Court? A. Not a single dollar in the whole course of my life.

Q. Have or have not numerous parties and attorneys or their clients applied to you to take from them such retainers? A. Attorneys have applied to me and parties have applied to me to accept retainers in proceedings before Judge Barnard.

Q. What has been your answer to them? A. I have declined to act in any case before Judge Barnard. I would here state what I did not remember that I had one case in 1866 or '67.

Mr. CURTIS:

We do not go into matters at that time.

Mr. ANDREWS:

Mr. Curtis only asks in reference to those three years. If that illustrates your relations to Judge Barnard you may state it. A. As I have started I will go on. I had a case, Pritchard against the Bank of California. In that case I was retained by Sheriff Kelly on the taxation of costs. Judge Barnard ordered it to be heard before Judge Ingraham. I had also forgotten a fact, that Mr. Ira Shafer prior to 1867 or '68—

Q. We don't want to go into matters prior to 1869. A. There were a few cases before him then when I was attorney, but nothing since 1869.

By Mr. PARSONS:

Q. Do you mean to state that there has no case happened within the last three years when, on solicitation of other attorneys, you have made an application to Judge Barnard, he not sitting in Court at the time? A. Application for what?

Q. For an order or his action in a judicial proceeding? A. I have here stated that I have made applications in a few cases that were brought to me for decrees of foreclosures.

Q. Except those? A. Yes, sir; I have had, I remember, orders left at my office by attorneys when Judge Barnard has been in the habit of calling on me. There were a number of cases where they would state these were so and so, and would ask me to get Judge Barnard to sign the orders, and I may in such cases have asked the Judge to sign the orders to oblige the attorneys. I think, in one or two cases, papers were left there where the parties desired attachments and the papers were examined by the Judge, and I remember a couple of cases where they were signed and I presume they were afterwards handed to the attorneys. I did not know the attorneys—I was not acquainted with them.

By Mr. CURTIS :

Q. Did you receive any compensation? A. No, sir; not a dollar of compensation.

By Mr. PARSONS :

Q. Don't you remember cases where you have been applied to within the last three years to obtain orders from Judge Barnard? A. No, sir.

Q. Orders granting relief of some kind? A. No, sir.

Q. Will you state that there have been no such cases? A. According to my best recollection I believe there have been no such cases. I am almost positive that no such orders were ever left with me. I have stated all I have remembered.

Q. Have you not frequently been applied to within the last three years by attorneys who desired to obtain favors from Judge Barnard to make an application on their behalf? A. No, sir.

Q. Have you not been requested by attorneys to speak to Judge Barnard in reference to orders desired from him or proceedings pending before him? A. I have been spoken to by attorneys who desired to retain me in cases before Judge Barnard.

Q. You have not answered my question in the form I put it. It is this: Have you been requested by attorneys to speak to Judge Barnard in reference to orders desired from him or proceedings pending before him? A. I shall have to answer that question, no.

Q. What do you mean by saying you "will have to answer that question no?" A. I mean to say that I mean no. I have said to you there have been only a few cases where parties would come to the office and would leave some papers there to be signed and the Judge would sign them. I have in three or four cases all told. I have taken no cases—no papers to the Judge for his signature at the request of anybody.

Judge Barnard, in addition to the admission made yesterday, also admits that there was no return to the writ of *habeas corpus* in the case of persons mentioned by Mr. Commissioner Davenport in his testimony of March 16.

Mr. PARSONS :

I think it is better to have the writ copied in the proceedings in this case. It is as follows :

"The People of the State of New York to John A. Kennedy,
"Superintendent of the Metropolitan Police of the State of New York,
"and to Inspector Walling of said police force, and to any person hav-
"ing the custody of below named relators, greeting :

"We command that you have the bodies of Alexander Mor-
"rison, Daniel Hanna, James O'Hara, Lawrence Fitzgerald, Thomas
"Wernhold, James Watson, William Edwards, and Thomas Seynour,
"by you imprisoned and detained, as it is said, together with the time
"and cause of such imprisonment and the detention by whatsoever
"name they shall be called or charged, befor the Honorable George G.
"Barnard, as Justice of our Supreme Court, at the office of said Justice
"Barnard, No. 23 West Twenty-first Street, in the city of New York,
"this 31st day of October, 1868, at 7 oclock in the evening, to do
"and to receive what shall then and there be considered concerning
"them, and have you then and there this writ.

[Witness]

Hon. GEORGE G. BARNARD,
Justice of the Supreme Court.

"31st day of October, 1868.

"WILLIAM F. HOWE, 138 Leonard street.

CHARLES E. LOEW,
Clerk."

On the back is the following handwriting :

"I hereby allow the within writ.

October 31, 1868.

GEORGE G. BARNARD
Justice Supreme Court.

Also the following :

"The prisoners being charged with no offence, on the annexed re-
"turn, I order them discharged.

"October 31, 1868.

GEORGE G. BARNARD,
Justice Supreme Court.

Mr. PARSONS :

I desire to have taken the statement of Captain Irving, contained in his testimony before the Congressional Committee, as follows :

"I made no return to the writ, as I had not time ; I was required to
"bring the persons to Judge Barnard forthwith."

THOMAS C. FIELDS, a witness, being duly sworn, testifies.

By Mr. PARSONS :

Q. Were you a member of the Legislature of 1871? A. Yes, sir.

Q. Do you remember some amendments to the code of procedure vetoed by Governor Hoffman, which were passed by the Legislature of 1871? A. My answer is that I am called here to testify on certain charges stated in the memorial before the Legislature, and I must know the charges on which I am to testify. I deny your right, or the right of this Committee, to ask any such question in regard to the Legislature of 1871. And I am protected in my refusal by the Constitution. If you will state what charges are specifically covered by this resolution on which you wish to examine me, I will answer any question you ask, but in regard to the question you have asked, what I did in the Legislature or what I did privately, this Committee have nothing to do with.

Q. Did you ever have in your possession a manuscript draft of those proposed code amendments? A. I decline to answer any question relating to any matter or thing I did as a member of the Legislature of 1871 on this investigation. I deny the right of this Committee or its authority to ask me any question in regard to my conduct as a member of the Legislature of 1871.

Mr. PARSONS :

There was no intention to ask about Mr. Fields' action as a member of the Legislature.

The WITNESS :

You have heard my answer. I decline to answer any question in regard to my conduct as a member of the Legislature of 1871, before this Committee. You are members of the present House and your jurisdiction extends to that House so far as any acts of the Legislature are concerned. Unless there was a charge presented against me, you have no right to ask me. What I did with manuscript I did under the instructions of that House, and until you can reverse the instructions of that House, you cannot investigate what I did under these instructions. What I did last year I did under the direct instructions of that House.

Mr. HILL : (To Mr. PARSONS.)

Under what charges have you anything to do with reference to the code amendments?

Mr. PARSONS :

There are several charges which state transactions and in connection with them we have charged a motive. The testimony we seek to elicit would be material as bearing upon the question of motive so far as that affects either charge or any charge.

Mr. CURTIS :

What motive?

Mr. PARSONS :

The motive with which Judge Barnard did the official acts charged against him.

Mr. TILDEN :

I do not understand you to inquire about Mr. Fields' conduct ?

Mr. PARSONS :

No, sir ; I do not question Mr. Fields in reference to his conduct at all.

The WITNESS :

You commenced to do that ?

Mr. PARSONS :

Mr. Fields happens to be in possession of an item of information. I think he is none the less obliged to disclose it because he was a member of the Legislature of 1871.

Mr. PRINCE :

I do not understand that they asked you as a member of the Assembly of 1871 ?

The WITNESS :

They asked me if I was a member of the House in 1871, and if I had in my possession a certain manuscript.

Mr. PARSONS :

I don't think the question was asked whether, as such member, he had possession of that manuscript, but if I did I will leave that out. I will ask whether he individually had in his possession a manuscript copy of these proposed code amendments ?

The WITNESS :

During the session of 1871 I had no bill or anything which formed a part of the records of the House as an individual. I held them all as a member of that House, and in no other way.

Mr. CURTIS :

If the Committee will pardon me I will make a suggestion which may be of service. If the gentleman will state in the usual way what they propose to prove and what is the specific charge they expect to direct their evidence to, the Committee will be able to judge whether it would or would not be the privilege of Mr. Fields, to refuse to answer. We are groping in the dark, or the witness is. Witnesses should not be put on the stand and feel themselves obliged to take exceptions on their own account.

Mr. PARSONS :

It is a rather novel objection that the witness shall not be permitted

to answer because he is "groping in the dark," because we do not disclose to him what we wish to find out.

Mr. CURTIS :

"I say the Committee are groping in the dark.

Mr. HILL :

In the practice at circuit when the Court does not see the object of counsel, it is common for them to ask the counsel to state what they propose to prove. If it is proposed to show that Judge Barnard drew the code amendments and gave them to Mr. Fields to put them through, so that it would relate to Judge Barnard's official conduct as a Judge of the Supreme Court, it might put a different aspect upon the case.

Mr. PARSONS :

I will take your (Mr. Hill's) suggestion.

The WITNESS :

I am perfectly willing to say as far as Judge Barnard is concerned—

Mr. PARSONS :

I do not think it is proper that Mr. Fields should make a general statement which we are not at liberty to inquire into. If the inquiry is suitable, we should be allowed to make the examination in our own way.

The WITNESS :

If you will ask me if I had any conversation with Judge Barnard in reference to a particular bill before it was introduced to the House of Assembly, I have no objection, or if I received any from him, I will interpose the objection.

Mr. TILDEN :

It may not be in the exact nature of a conversation. The question must touch the witnesses' whole knowledge.

Mr. HILL :

Communication or knowledge?

Mr. PARSONS :

The question I have put and the one I desire to have answered is, if Mr. Fields had in his possession a manuscript copy of the proposed code amendments, prior to their passage by the Legislature?

Mr. CURTIS :

On what charge or specification of a charge does this bear?

Mr. TILDEN :

We must decline to confine the Committee to investigate the exact charges.

The WITNESS :

I propose to confine my testimony to the specific charges under the resolution.

Mr. PRINCE :

The resolution does not look to any specific charge. It is to investigate the local judiciary of the city of New York.

The WITNESS :

The matters therein alleged mean the charges.

Mr. PRINCE :

They are entirely general.

THE WITNESS :

Then there is nothing to examine me on ?

Mr. HILL :

I understood that the majority of this committee, in session, on a motion for that purpose, required the testimony to be confined to the charges ?

Mr. PRINCE :

I am speaking of the resolution.

Mr. HILL :

The counsel for the accused asks of the Bar Association under what charge the question is asked, and they contend that they are entitled to know it.

Mr. TILDEN :

I simply state that the committee are not confined in their investigations—they are not limited to charges that the Bar Association have made.

Mr. HILL :

My remark was not in reply to you, Mr. Tilden.

Mr. CURTIS :

I perfectly appreciate your position.

Mr. TILDEN :

The Committee have not hesitated, whenever it was thought advisable, in regard to the general objects of the investigation, to put any additional questions they might choose, or to admit questions which they thought would tend to elicit the truth.

Mr. CURTIS :

I appreciate the distinction you speak of ; but there is this consideration, that when the Legislature had received the memorial from this

body—these present prosecutors—making certain charges against a particular judge in this city. the Legislature passed a resolution, such as is before you, instructing you to investigate the condition of the Judiciary in New York, generally, and you then receive these charges which are undergoing investigation. Whether these parties in prosecuting the charges, are not to be confined to those charges, is the question. If a broader investigation is to be gone into in reference to the condition of the judiciary, generally, that is a matter in which we may or may not have any concern.

Mr. TILDEN :

It may be proper to state to the counsel that the Committee have decided in this investigation that they would not entertain discussions by counsel as to the pertinency of evidence. If the thing is to be conducted as it would be in a court of law in that respect, the discussions would be interminable, and would embarrass and delay the necessary investigation for the discovery of the truth. It therefore must pursue a method of investigation independent of any rule of evidence that requires the pertinency of a particular question to be shown.

Mr. STRAHAN :

The Committee did decide to do that, and then did not do it. The practice of the Committee in that respect has been altogether contrary to this rule. On every question where objection has been allowed, discussion has been allowed.

Mr. PARSONS :

I think we have never been heard upon any objection.

Mr. STRAHAN :

Perhaps you cannot call it a controversy, but discussion and argument have been resorted to. I agree that we have made a rule, but I say that our practice has not been in accordance with it.

Mr. TILDEN :

It has sometimes been deviated from, but we have not entertained much discussion about the pertinency of evidence.

The WITNESS :

Have you anything more that you desire to ask of me ?

By Mr. PARSONS :

Q. I desire you to answer the question ? A. I decline to answer a question in reference to my acts as a member of the Legislature of 1871. I am not on trial.

Q. I will change the form of the question in this respect, and ask whether you had in your possession prior to their introduction into the Legislature, a manuscript copy of those code amendments ? A. I can say that I had no manuscript copy of any code amendments or any-

thing else, except those that came to me as Chairman of the Judiciary Committee of the House, therefore, I held none other than an official relation to anything of that kind.

Mr. PARSONS :

The Committee will be compelled to say whether we are entitled to an answer to the question.

Mr. STRAHAN :

I would like to hear the question read ?

[The stenographer reads the question as follows :]

Q. " I will change the form of the question in this respect, and ask " you whether you had in your possession, prior to their introduction " into the Legislature, a manuscript copy of those code amendments ? "

A. I have stated that I would decline to answer any question that related to my conduct as a member, or to my acts as a member of the Legislature of 1871 ; that is what I stated.

By Mr. NILES :

I do not think you get the point of the question. They want to know if you had in your hands before it came into the House at all any such manuscript ? A. If the gentleman (Mr. Parsons), was as familiar with the code amendments in the Legislature as you are, they would know that they come in piecemeal, one at a time, from all parts of the State ; they are digested and put in form by the Committee afterwards. There was no manuscript copy of the code amendments.

By Mr. PARSONS :

I will be satisfied if you will state if you had in your possession any draft of any part of those code amendments, or of any proposed amendments which subsequently were passed, either in the form proposed or in any modified form ? A. I cannot tell you whether I did or not. That can only be ascertained by consulting the journal, to see whether I introduced them.

Q. Do you remember getting the amendments which the Governor vetoed ? A. I saw by the newspapers that he vetoed the code amendments.

Q. Did you not, prior to their introduction into the Legislature, have in your possession a manuscript draft of those proposed amendments ?

A. No, sir ; as I stated, there was no draft of the code amendments. The code amendments used to come in piecemeal ; some come from Cattaraugus, some come from Chautauqua, and some from New York, and are introduced by perhaps fifty people in the House. They are filed away by the Committee and after some time they are digested, and such as the Committee agree upon are reported.

By Mr. PRINCE :

Q. In one bill ? A. Yes, sir ; in one bill. There is no draft at all about it.

Mr. NILES :

Three-quarters of these amendments might have come from one source, and others might have come from different sources. The committee never report the code amendments until about the time the Legislature closes the introduction of bills. Then they take them up and make one bill out of the whole. Perhaps, you (Mr. Parsons), were referring only to such as came from New York.

Mr. PARSONS :

I refer to those only that were vetoed by the Governor.

Mr. NILES :

He vetoed the whole of them. There might be twenty-five different sections in the bill.

Mr. PRINCE :

There are probably thirty of them before us now.

By Mr. PARSONS :

Q. Do you remember the proposed amendment requiring certain suits affecting railroad corporations to be brought in the first judicial district? A. Well, sir, I cannot tell you now, unless I should see the code amendments and what there were in them. We had a great deal of business before our Committee. It was the most laborious Committee in the House—as Brother Prince will tell you—and I cannot tell what the amendments to the code were.

Q. Did you receive any proposed amendment to the code from any Justice of the Supreme Court, in the First Judicial District? A. Not to my knowledge; I do not know the handwriting of any Judge. I may know Judge Barnard's signature if I was to see it, but I do not know the handwriting of the Judges.

Q. Did you receive any proposed code amendment from any person that you were informed came from any Justice of the Supreme Court in the first Judicial District? A. Do you ask me as a legislator or as an individual?

Q. I ask you as an individual? A. Then, as an individual, I never did.

Q. Do you mean that Thomas C. Fields, as an individual, never did? A. Yes, sir, to his knowledge.

By Mr. TILDEN :

Q. In what capacity? A. He asks me if I received the code amendments, either in the handwriting of a Judge of the First Judicial District, or that I was informed. I say, I never did.

By Mr. PARSONS :

Q. Or that you were informed came from any Justice of the Supreme Court, or were drawn by any Justice of the Supreme Court? A. Not to my knowledge; I never heard of such a thing.

By Mr. TILDEN :

Q. Do you know whether any Judge of the Supreme Court in the First Judicial District was the author of any of the provisions in the code amendment bill? A. I wish you would make your question specific as to the Judge, and then I will answer. That is a very general question. You are too good a lawyer to ask it, and I am too good a lawyer to answer it. State which one and I will answer it. I am ready to answer any specific question on that point.

Q. I am entitled to have it answered as it is, but I will ask: Did Judge Sutherland? A. No, sir.

Q. Judge Clerke? A. No, sir. I do not know Judge Sutherland's handwriting or Judge Clerke's handwriting.

Q. Judge Ingraham? A. No, sir.

Q. Judge Barnard? A. No, sir.

Q. Judge Cardozo? A. Not to my knowledge.

Q. Judge Brady? A. No, sir.

Q. Do you mean to say— A. I mean to say that I am not aware of receiving, last winter, any code amendment prepared by, or through the influence of, or by the dictation of any Judge of the Supreme Court of the First Judicial District.

By Mr. NILES :

Q. Or that you understood was so prepared? A. I tell you I do not know where the amendments came from; I did receive one amendment—a very lengthy one, which, I understood, was prepared by Mr. O'Connor, in regard to the removal of *lis pendens* in particular cases. I presume it was to apply to a particular case. I do not know that it came from Mr. O'Connor.

Q. The question was whether you were informed where either batch of these amendments came from? A. They do not come in batches.

Mr. STRAHAN :

Or any one of them.

Q. There were certainly some that contained more than one section? A. They came through the mail, perhaps, directed to the Committee.

Q. There were certainly some that contained more than one section, were there not? A. I am not conscious of having introduced an amendment to the code last winter.

Q. I am talking about those that came into your hands. A. As Chairman of the Committee—that I decline to answer.

Q. Thomas C. Fields we are talking about now—into the hands of Thomas C. Fields? A. I have no recollection of any code amendments, either in patches or batches, that came to Thomas C. Fields, instigated, drafted or written by any member of the Supreme Court.

Q. Or whether you had information that they were drafted by a Judge? A. No, sir; I never had any such information.

By Mr. PARSONS :

Q. You mean to say that neither as an individual nor as a member of the Legislature you had any information to the effect that any such code amendments were drafted by a Justice of the Supreme Court of the First Judicial District? A. I have no recollection of any such information or any such knowledge.

Q. Did you recognize the handwriting of any such proposed code amendments? A. No, sir; I did not.

Q. In no case? A. In no case, to my knowledge.

Q. Did you ever inform any person who was the author of any such proposed code amendments? A. That I cannot say. It would depend upon circumstances. If I thought I could fool a man and make a vote for a thing by making him believe that it came from some high authority, I would say it.

Q. Did you ever have any conversation on the subject with a Judge of the Court of Appeals? A. Well, I do not know. I have had some very curious conversations with Judges of the Court of Appeals.

By Mr. NILES :

Q. You do not mean to say that you would try to mislead, or to use the common expression, "pull the wool over the eyes" of your associate members? A. In the Legislature?

Q. Yes, sir. A. No, sir; most of them don't have wool enough to pull over their eyes. I would not do such a thing as that, even if one of your little short speeches could. (Laughter.)

By Mr. PARSONS :

Q. Do you not remember a conversation with a Judge of the Court of Appeals, in which you informed him who was the author of some of those code amendments? A. I do not have any recollection of it. If you will tell me, the Judge, or give me some circumstance by which I can refresh my memory so that I can know, I will tell.

Mr. PARSONS :

I am very much obliged to you for the information you have given us. (Laughter.)

By Mr. NILES :

Q. Where are the original drafts of bills now—those that are reported favorably must appear somewhere? A. They were, of course, passed and vetoed by the Governor. Whether they were sent over to the Secretary of State's office or not, I do not know. They were printed, I believe.

Q. I mean the original drafts. A. I do not know where the original drafts of bills are kept.

Mr. HILL :

It goes to the printer, and they are there burned up.

By Mr. STRAHAN:

Q. I ask you, whether, as Chairman of the Judiciary Committee, you had any information of any proposed amendment being prepared by or suggested by a Judge of the Supreme Court in the First Judicial District? A. I say, that while I dispute the right of the Committee to ask the question, I have no objection to stating that I have no such knowledge.

Mr. STRAHAN:

I wanted to know whether you did answer that directly before.

By Mr. CURTIS:

Q. Did you have any pecuniary transaction with Judge Barnard of any kind? A. Yes, sir.

Q. Did you ever pay Judge Barnard, or deliver to him any money that you had previously borrowed from him? A. Yes, sir. I owe him \$1,500 now, borrowed money. He loaned me \$5,000 to pay a note, just after election, and I have paid it off as fast as I could until the present time.

By Mr. PARSONS:

Q. You have been asked by Mr. Curtis whether you ever had any pecuniary transactions with Judge Barnard, and you have stated that you did. State those that were subsequent to January, 1869. A. I have not had any pecuniary transactions, except that I might have borrowed, as one gentleman would borrow from another—ten dollars, or a hundred dollars, or fifty dollars. Going down and stopping at his house, I may have borrowed a hundred, or two hundred dollars, and repaid it when I got down town. After the last election, and during these troubles, I was very much "cornered." I had a note of \$5,000 due, and I did not know where to raise the money. My circumstances were such that I had no facilities for doing it. I stated the fact, and he said he would aid me. I think he assigned his pay—his salary as Judge, to the bank and—

By Mr. ANDREWS:

Q. The Shoe and Leather Bank? A. Yes, sir. He had his note discounted, and assigned his pay as collateral. He did it for me as a friend, and I paid my note and saved it from going to protest. I have liquidated the amount as rapidly as I could, but there is still \$1,500 due him—that is all.

Judge BARNARD:

No; there is ten dollars you borrowed the other day. (Laughter.) A. Well, I will pay that. I may have made the Judge a present. He has made me presents. Perhaps I have presented him with sleeve buttons. I think our presents, so far as they are concerned, are about equal, but I am in his debt \$1,500—that is the extent.

By Mr. ANDREWS :

Q. And the ten dollars? A. And the ten, which I propose to pay as soon as I can. (To Mr. Parsons :) Have you anything more with me?

By Mr. PARSONS :

A. I simply want to ask you whether you have stated all the pecuniary transactions between Judge Barnard and yourself subsequent to January 1, 1869? A. Yes, sir.

Q. Have you not loaned Judge Barnard money? A. Never in my life, except as I say, he may have got ten or fifteen dollars in the way I have spoken of, that is the only way I have ever loaned him money. It has always been my aim, and I think I have been successful to keep a little ahead of him so far as the borrowing is concerned. (Laughter.) (To the committee,) good morning, gentlemen. (To Mr. Parsons,) I shall be happy to see you, Mr. Parsons, at any time. (Laughter.)

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EVENING SESSION.

March 18, 1872.

Mr. CURTIS :

I understand, Mr. Chairman, that I am to speak to the question of whether the Committee will go behind the date of January 1st, 1869, in reference to any official acts of Judge Barnard.

Mr. TILDEN :

Excuse me, Mr. Curtis. In regard to any transactions happening prior to that.

Mr. CURTIS :

Well, sir, it is sufficient for my purpose, to say official acts, I will explain hereafter what I mean. Although I regard this question as a very plain one that has been settled for at least a century, in principle, it is my duty to make it as plain to the Committee, as it appears to my own mind. The office from which these petitioners or memorialists seek to have Judge Barnard removed, is the office which he now holds, commencing on the first day of January, 1869. They certainly don't seek to have him removed from the office which expired on the 31st day of December, 1868. The office, his removal from which they desire, commenced on the first day of January, 1869, and runs to the end of eight years from that day. Now, the rights of two parties are involved here. First, the right of the incumbent to hold and enjoy

the office, secondly, the vastly more important right of those who are called as constituents to have him execute the office to which they designated him. His election, which took place in November, 1868, resulted, as I am informed, and as I have seen by a certificate from the proper office, in a majority of more than 68,000 votes, and I think that on that occasion, he led every candidate on his own political side for any office that was voted for on that election. Certainly a most emphatic indorsement by the people of his district. Now, neither of these rights, that of the incumbent to hold and enjoy the office, or that of his constituents to have him execute it, can be interfered with by any power in the State, excepting the power of impeachment or that of removal; and what you gentlemen have to determine is, how these powers can be executed, so that they shall not interfere with each other. We claim neither the power of impeachment before a court consisting of the Senate and the Judges of the Court of Appeals, nor the power of removal by a concurrent resolution of the two houses, can be exercised on any alleged misconduct in any other office; that the office of Judge of the Supreme Court which he held prior to 1869, is just as distinct and separate, an office from that which he now holds, as was the office of Recorder which he held from 1858 to 1861, or any other office that he might have held before he held that of Recorder; and that upon principle and precedent and every sound view of the relation between the appointive and the removing powers under our constitution, there can be no inquiry into any official acts or any official conduct or personal character exhibited or displayed, prior to the 1st day of January, 1869, on which day, by law, the office came into existence which he now holds.

The first point, therefore—and I shall go over these suggestions with great rapidity, as rapidly as I can. The first point that I desire to submit to you is, that the present office is a distinct and separate office from any that he ever held prior to 1869. Well, in order to see this, it is only necessary to refer to the fact that the former office expired by limitation of law on the 31st of December, 1868. That the same individual was chosen to an office of the same name and functions, establishes no continuity whatever between the two offices. The former office was completely fulfilled, and all its functions executed and discharged, and it was extinct on the 31st day of December, 1868, in as absolute and unqualified a sense as if some other person had been chosen to execute the future office. The appointments of the two were distinct, separated by an interval of years, and a separate certificate of election related to each. The former appointment and the former certificate of election could not authorize him, or anybody else, to exercise the office of Judge in this Judicial District after the 31st of December, 1868. A new appointment and a new certificate of election were necessary to enable him or anybody else to exercise the functions of Judge. The usual notice to the electors; what does that call upon them to do? In all cases, the term of the office to which they are to appoint some one is described, and the old term is always described. There may, or there may not, be changes about to

take effect in the existing laws, which regulate the functions or duties of the office. If there are, the electors are presumed to know it. Whether there are or are not, the electors understand that they are to appoint some one to the office, who is to exercise and enter upon its functions at a future day. Now, the functions of the new office depend on laws as they may exist, when the person chosen enters upon the duties of the office, and not as they apply to the old office. In exercising the power of appointment, therefore, the electors, whether they choose the former incumbent or choose some one else, point to an office which is to come into effect at a future day, and which has none but a prospective existence on the day when they give their suffrages. The continuity of the standing laws which regulate the functions and powers of the office cannot possibly affect this question, for the laws do not take effect on the new office until the new term begins to run. I contend, therefore, gentlemen, that in all cases of election to office, and election to a future and distinct term, is an appointment to a distinct office, from that which preceded it, although it is one of the same name, and of the same nature. Whoever is appointed, is appointed to hold an office which comes into effect only at the commencement of the new term. I come now to the second proposition to which I have to ask your attention, and you will undoubtedly appreciate its importance. This is, probably, the most conspicuous instance that has ever occurred in the State, perhaps the most conspicuous one that ever can occur in which this distinction is to be applied. I say that a just and necessary view of the relation between the power of appointment and the power of removal, shows that an incumbent of an existing office can not be removed therefrom on account of any official misconduct that occurred in any office which he held prior to the last appointment, which former office is extinct, at the time when his removal from the existing office is sought to be effected. You will observe that I confine this proposition to official misconduct, not because it could not have been made much broader in its terms, but because the charges here relate only to official misconduct. The same question might arise if the charge were of some personal vice, such as gross intemperance, going back for a long series of years, and extending into the period of the existing office, and alleged to be so great as to incapacitate the incumbent from the proper discharge of his function, or to be a public scandal. Whatever the charge is, the question must arise whether the exercise of the power of appointment by the electors does not necessarily preclude the power of removal, and confine the impeaching or removing power to matter arising during and under the existing office. This depends, of course, on the constitutional relations between the appointing and removing powers. Now, by the constitution of the State, the appointment of Judges of the Supreme Court is vested exclusively in the qualified Electors of the district. They exercise that power, not through any intermediate agency, or any intermediate machinery, but directly through a popular election, in the most direct exercise of the popular will that can exist under our form of government and

that brings into view an absolute, and as I submit, uncontrollable right to appoint whom they please, provided he has the requisite legal qualifications. It presents the electors as the appointing power, in whom is vested that right exclusively, and every other power in the state be it what it may, must be so interpreted and exercised as not to interfere with or reflect upon the exercise of their will. On the other hand, gentlemen, the power of removal, either by an impeachment or by a concurrent vote of the two houses is vested in other bodies entirely. The impeachment must be tried before a Court consisting of the Senate and the Judges of the Court of Appeals. The power of removal is exercised by the concurrent vote of the two Houses; but in respect to this question that arises here now, in regard to this evidence, there is, I submit, no distinction to be made between the two; because, as I submit, both of them are confined, by the necessary operation, and the free scope of the power of appointment, to matters arising subsequently to the last appointment. To exercise either of these powers by inquiring into matters arising before that last appointment would be an improper interference with the prerogative of the appointing power, because it would interfere with a matter which is exclusively referred to their sole discretion and free and unfettered will. What is it that is so referred by the constitution? It is the choice of the person whom they will have to exercise the office of Judge of the Supreme Court in this district for a period of eight years from the 1st of January, 1869. With this free choice, no power in the State can interfere while they are exercising it, and isn't it a reasonable and fair deduction from that, that no power in the State can reflect upon or review that discretion. Freedom of choice necessarily supposes an absolute right to decide on the fitness of the individual whom they designate, and when they give him their suffrages they pass upon every act of his life, personal and official, every trait or manifestation of his character that has existed up to that time, that can possibly affect or ought to affect the suffrages of freemen. It is not necessary to inquire or to know whether they have specially condoned any particular alleged official misconduct that has occurred prior to that time. It is enough that they have pronounced their will for the exercise of that will necessarily implies that they have acted upon everything which ought to affect their discretion. He is the person they say, whom they choose to have enter upon the duties of that office, and when he enters upon it, he is clothed with an official robe, that is as pure, in judgment of law, as if it came from heaven. In judgment of law he is to be deemed in all respects a fit and proper person to exercise the office to which they have designated him. This limitation of the power of removal springing from the just scope and exercise of the power of appointment, in no way interferes with the just prerogative of the removing power. The Constitution, by vesting in distinct bodies of the State, these separate powers of appointment and removal, manifestly intended that they be so exercised as not to interfere with or jostle each other. The power to appoint is however narrowed and restricted unless you adopt the conclusive presump-

tion that the electors, in exercising their right of appointment, have passed upon everything that has gone before. One of the most important of the questions that can be submitted to them, one, that, in point of fact, enters into their consideration, the conduct of the incumbent of a former office, if he has held any former office, and their decision on that matter, I submit must be held under our Constitution to be final and conclusive, and that there can be no appeal and no revision of those matters direct or indirect. Now, perhaps, it will be said that this argument is technical and does not provide for inquiries into matters not known to the electors or on which they were, perhaps, incapable of passing, or which they did not sufficiently understand. In the first place, I submit that the argument is not technical, and that it proceeds upon the necessary limitations of the removing power and the limits within which that power must be exercised so as not to interfere with the power of appointment. In the second place, how is it to be determined in any given case that the electors did not know or fully understand, or were incapable of appreciating any particular misconduct that may have occurred before the appointment? The Constitution assumes that they are capable of judging, otherwise it would not vest in them the power of appointment. It assumes that they do judge; otherwise it would not authorize the incumbent to enter upon the office after the election; and it assumes that they know and understand everything which it is their interest and duty to know and understand.

Let us now inquire briefly what is the proper function of the removing power, and how it can be exercised without interfering with the power of appointment. If it is confined to misconduct in the office, the removal from which is sought, it fulfills all the functions that it can fulfill without interfering with the function of the remaining power. The inquiry in any case commences with the assumption that the incumbent, when he entered upon the office, was conclusively pronounced by the appointing power a fit and proper person to enter upon it and to exercise its functions. Thereafter the electors can pass upon nothing until they are called upon to make a new election; they can pass upon nothing in the intermediate time. If the incumbent has fallen from the state of purity and fitness in which the law presumes him to be by reason of the election, it is for the removing power to ascertain his delinquency and to pronounce his condemnation, and that I take it is the only mode in which these two powers can be exercised without interfering with each other.

These principles first came into consideration, and were conclusively settled in what an English historian has described as that Seven Years' War which the Government of England saw fit to wage against John W —, when the powers of the House of Commons, he says, being brought into play, notwithstanding the popular voice, and against an electoral body, were unconstitutionally wielded and at last disgracefully foiled.

Mr. Wilkes was expelled from the House of Commons in 1769 for being the author of certain libelous or scandalous publications. This was the first act of what Edmond Burke called a tragic comedy, acted

by the legislative servants, at the express desire of certain persons of quality, for the benefit of Mr. Wilkes and at the expense of the constitution. He was immediately re-elected by his constituents. The House thereupon expelled him a second time. His constituents again returned him by an immense majority. The House then resolved that, having been once expelled, he was incapable of being returned to the same parliament, declared the last election null and void, and ordered a new one. Wilkes was unanimously re-elected, and for the third time, and again he was declared ineligible. At the fourth election the ministry ran a candidate of their own who received less than 300 votes, Wilkes receiving over 1,100. Luttrell, the minority candidate, was declared by the House to be the elected person entitled to the seat. Wilkes was then excluded for the fourth time in sheer violation of the right of the electors upon the unconstitutional resolution that the House of Commons could, by a simple resolution, disqualify any man who was qualified by the law of the land against the will of his constituents. This manifest usurpation made Wilkes for the time the most popular man in England, and this factitious popularity carried him into the office of Lord Mayor of London. Dr. Franklin, who was in England at the time as agent for some of our colonies, and who saw this whole ferment and excitement, and appreciated it, said that if the king had had a bad personal character and Wilkes had had a good one, Wilkes would have driven the king out of the country. The ministerial doctrine has been utterly repudiated by succeeding generations, and was forcibly condemned at that time by the leading men of that age. In 1783 the resolutions of the House of Commons, disqualifying Wilkes, were expunged from the journals. The discussions in this case of Wilkes, which may be found in Corbett's Parliamentary Register, a copy of which is in the Astor library, have an important bearing upon the present question. It was not denied that the House of Commons could expell a member for cause, but it was maintained that when the electors, after such expulsion, had again returned him, they had conclusively passed upon his fitness to hold the office for which they designated him, that he could not be again expelled for the cause on which they had pronounced their judgment; that a resolution of the House declaring him ineligible because he had been once expelled, was an attempt to make a disqualification not made by the law, and a violation of the freedom of election.

If these positions are sound, and no one will venture to deny them at this day, in England or America, the removing power under our Constitution can never act on grounds of disqualification on which the appointing power has acted, and declared its will.

Mr. TILDEN:

Do you mean to say that a member of the Assembly, and a member of the Senate cannot be expelled for an act done during the prior term? Are you aware of the statute of bribery in this State?

Mr. CURTIS :

That is a special matter ; I am arguing on general principles. That relates solely to the subject of bribery, and is an exception to the present case.

Mr. STRAHAN :

Will you be kind enough to state your proposition again ?

Mr. CURTIS :

I say that the removing power under our Constitution, when the power of appointment is vested in a separate body in the State, namely, the electors of the district, can never act on grounds of disqualification on which the appointing power has acted, and declared its will ; and, I had had the the honor to argue, I think before you came in, sir, that the appointing power has acted, and declared its will, and pronounced its judgment on the fitness of the incumbent when they appointed, taking into view all his official acts in any former office that he may have held.

Mr. NILES :

Let me ask you one question so that I may understand how far you intend to have that go. Do you add "where the appointing power acted, or had an opportunity to act in reference to that qualification."

Mr. CURTIS :

Of course it embraces opportunity. I say there is the necessary presumption of law, that they do act.

Mr. TILDEN :

I would like to ask you this question. I understand you to state your precedent to be a precedent derived from the Wilkes' case.

Mr. CURTIS :

One of the precedents ; I am coming to others.

Mr. TILDEN :

That a man cannot be twice expelled for the same offence. Now I understand you to go further than that and argue that a man can not be expelled or removed for matter that occurred before the present term.

Mr. CURTIS :

Before the last election.

Mr. TILDEN :

I want to call your attention while you are arguing this point, to the circumstance that these are somewhat different questions. Where a man has once been expelled or removed for a defined offence, it may be supposed to have been brought to the attention of the appointing power ; and if the appointing power subsequently reappoints him it is

a case somewhat different from that of a man being expelled for an act of which there is no evidence that it ever came to the cognizance or attention of the appointing power, for something newly discovered, or something unknown at the time. I merely call your attention to the distinction between the precedent you cite and the argument to be deduced from it.

Mr. CURTIS :

I believe it was while you had stepped out that I was considering that point ; that in my view there is a conclusive presumption that necessarily arises from the exercise of the appointing power and its relation to the removing power—

Mr. TILDEN :

No ; I heard that--

Mr. CURTIS :

That everything is passed upon, that everything is known, and that you can not go into inquiries, and that you can not draw the line, that you can not ascertain wherein they fail to know.

Mr. NILES :

You use the words conclusive presumption ; that is what I was going to ask, and that will finish up all that I want to be clear about. Do you mean by that that the presumption is such that you are not at liberty to prove that it was not known or passed upon, or if it were proved by one hundred witnesses, or a thousand, that it could not be taken account of for the purpose of impeachment or removal ?

Mr. CURTIS :

I mean to say that such, in my view, is the force of the presumption and the necessary relation between the two powers, that you must assume that in designating a person to an office they have passed upon everything which entered into his qualifications, except his qualifications that are fixed by statute law.

Mr. TILDEN :

Do you find anything in the constitution which says that ?

Mr. CURTIS :

In the constitution ? No, sir. You will find that only—

Mr. TILDEN :

On general principles.

Mr. CURTIS :

On principles and precedents. This case of Wilkes is a very strong precedent to that effect, as will presently be seen when I come to read what I propose to read of the discussions from that case. I say that on causes of removal, which cannot have come into the views of the

electors, because they have arisen since the party was elected to his present office, the removing power can act, and that it must act on those, that that is its function, that it is assigned to that duty by the Constitution. That, and the other duty of the electors, was assigned by the Constitution, and that is the principle which was settled in the case of Wilkes by a popular reversal of the action of the House of Commons, by the condemnation of that action, pronounced by the most distinguished statesmen of the day, and by its repudiation by all subsequent history; and it is worth while to note that the men who were arraigned on the one side in that matter were the same court party who originated and carried the measures that produced our revolution, and that the men who opposed the usurpation were the same persons who justified us in our revolution.

Mr. TILDEN :

If you will excuse me, I being somewhat familiar with that case of Wilkes myself, would suggest to you that it is not a precedent for the effect that you seem to ascribe to it.

Mr. CURTIS :

If you will bear with me, I will show you that it is a precedent.

Mr. TILDEN :

Excuse me one thing, I want to call your attention to one point. The question in the Wilkes' case was not a question of removal or anything done during a former term. It was simply the question of two, three or four successive removals for an act done within one term, or for the same act at any rate. The question involved in that case was not whether the act was done during the present term, but whether there should be an indefinite number of successive removals for the same act. My impression is that the act was done within the term; I am not quite sure about that; but the question involved was simply this, whether there should be successive removals or expulsions. In that case there were four expulsions for the same ground of offense, my impression is that the ground of offense was committed during the term.

Mr. CURTIS :

During what term?

Mr. TILDEN :

During the same parliament. The expulsions were during the same parliament, my recollection is—

Mr. HILL :

Do you mean to say that you think that Mr. Wilkes acquired rights every time he was expelled.

Mr. TILDEN :

I did not say anything of that kind.

Mr. HILL :

Was not the question really presented upon his second expulsion ?

Mr. TILDEN :

Certainly.

Mr. HILL :

Just as strong then as ever.

Mr. TILDEN :

Just as strong then as ever. The question was whether a man could be the second time expelled for the same cause. It was not a question whether a man could be expelled for a cause happening at any particular time, happening in a former term, but whether a man could be twice expelled for the same cause, having been once expelled and reelected, whether he could be expelled again for the same cause.

Mr. HILL :

The case cited and the reason I refer to it now is, that I heard about two hours' argument on each side of this very question—it is cited in the report in Congress to be an authority for precisely what Mr. Curtis quotes it.

Mr. TILDEN :

I do not go to any reports of Congress ; I have the volume ; I have had it a great many years, and derive my information from the original authority

Mr. CURTIS :

Wilkes was expelled from the House of Commons for being the author of certain libels which he published while he was a member of the house.

Mr. TILDEN :

These expulsions were all from the same parliament, I think.

Mr. CURTIS :

The expulsions were all from the same parliament.

Mr. TILDEN :

And for the same article, and for an article happening during one term.

Mr. CURTIS :

Well, Mr. Tilden, if you will pardon me, when he was once expelled by the House for a cause for which they had power to expell him, his office was at an end, as he could not hold any office or seat in that House until a new election, when he was elected again, the argument was, by those who defended him, that he was elected to a new office.

Mr. TILDEN :

For the same term in the same parliament?

Mr. CURTIS :

The same parliament. He was elected to a new seat, under a new writ issued to fill a vacancy; and, so he was at every successive election. I do not cite the case for any other purpose than this—that it shows where, under the Constitution of England, as well as under our Constitution, this matter of appointment resides, and what it is that the appointing power passes upon when it elects a man to an office, be it one term or another. Now, there is a very close parallel between this case of Wilkes and what the case of Judge Barnard will be if the appointing power acts upon matter which occurred before the first day of January, 1869. In the first place, the constitutions of the two countries are in this respect exactly parallel. The appointing power was vested there in electors to appoint some person to fill a seat in parliament; here, it is vested in the electors to appoint a judge of a court. The removing power—the power to expel him from the office to which the electors appoint him was vested in the House, here it is vested in the Legislature. The very same question, therefore, with regard to the exclusive, and the conclusive authority of the electors to appoint a man fit to fill an office arises in both cases, and it is parallel throughout, or will be if the legislature ever acts upon those matters occurring before the first of January, 1869.

Mr. NILES :

I can see very clearly that this was a new office of Wilkes, just as much as Judge Barnard. I can see also that one of the questions involved was whether they could expel him from one office for acts done during the currency of a prior office. All those things are clear to me, but do you claim that the presumption that the electors acted upon the facts is just as strong in a case where an attempt to expel the first time follows the election, as where, after one expulsion, and the fact of that expulsion having been certified to the people, and a new election called in consequence of that expulsion, which brings it directly to the people, and they re-elected this same man?

Mr. CURTIS :

I do not understand that in the Wilkes' case there was any question as to anything being certified as to Wilkes' conduct to the electors, to bring to their attention his fitness for the office.

Mr. NILES :

It was not a point made that it had now been in substance returned to them for their verdict.

Mr. CURTIS :

No, sir; I don't understand that there was any such thing ever entered into their consideration.

Mr. TILDEN :

Brought to their attention by reason of his expulsion ?

Mr. CURTIS :

No ; because it was brought to their attention by a thousand other things. They knew it, of course, just as every man in England knew everything. I do not understand that was brought to their attention, or that anybody laid any stress upon that one way or the other, but that the condemnation which the whole proceeding received, and the ground on which the resolutions were finally expunged, was that there being a writ issued to fill a vacancy in the office of representative of the county of Middlesex, they had returned John Wilkes, and that their judgment on his fitness to be a person to sit in parliament was conclusive, and could not be inquired into, whether he had been expelled formerly or had not been.

Mr. NILES :

That answers exactly my question, if you are right on that.

Mr. CURTIS :

There was a discussion took place on this subject in the House of Lords in the midst of the excitement, when the excitement was at its acme, and when there was a state of very great danger growing out of it. In that discussion it so happened that there was an address to be moved, an address to the King for some formal matter. Lord Chatham moved an amendment to it, that the House of Lords would take into its consideration the discontent prevalent in the kingdom, on account of the expulsion of Wilkes from the House of Commons, and in the course of his speech on that occasion he said :

“ The liberty of the subject is invaded, not only in the provinces (at
 “ this very time our difficulties were going on), but here at home.
 “ The English people are loud in their complaints. They proclaim with
 “ one voice the injury they have received. They demand redress, and
 “ depend upon it, my Lords, that one way or other they will have redress.
 “ They will never return to a state of tranquillity until they are re-
 “ dressed ; nor ought they, for, in my judgment, my Lords, and I speak
 “ it boldly, it were better for them to perish in a glorious contention
 “ for their rights than to purchase a slavish tranquillity at the expense
 “ of a single iota of the Constitution. Let me entreat your Lordships,
 “ then, in the name of all the duties you owe to your sovereign, your
 “ country, and yourselves, to perform the office to which you are called
 “ by the Constitution, by informing his majesty truly of the condition
 “ of his subjects, and the real cause of their dissatisfaction. I have
 “ considered the matter with most serious attention, and as I have not
 “ in my own breast the smallest doubt that the present universal dis-
 “ content of the nation arises from the proceedings of the House of
 “ Commons upon the expulsion of Mr. Wilkes, I think that we ought,
 “ in our address, to state that matter to the King. I have drawn up

“an amendment to the address, which I beg leave to submit to the
 “consideration of the House, namely: That after the words, ‘And
 “which alone can render our deliberations respectable and effectual,’
 “be inserted the words, ‘And for these great and essential purposes
 “we will, with all convenient speed, take into our most serious con-
 “sideration the causes of the discontent which prevails in so many
 “parts of your majesty’s dominions, and particularly the late proceed-
 “ings of the House of Commons touching the incapacity of John
 “Wilkes, Esq., expelled by that House, to be elected a member to
 “serve in this present parliament, thereby refusing, by a resolution of
 “one branch of the Legislature only, to the subject, his common right,
 “and depriving the electors of Middlesex of their free choice of a rep-
 “resentative.’ The cautious, guarded terms in which this amendment
 “is drawn up will, I hope, reconcile every noble Lord who hears me
 “to my opinion; and as I think no man can dispute the truth of the
 “facts, so I am persuaded no man can dispute the propriety and
 “necessity of laying those facts before his majesty.”

He was followed by Lord Camden, who declared “he had accepted
 “the seals at first without any conditions; that he meant not therefore
 “to be trammelled by his majesty’s ministers; that he had suffered
 “himself to be so too long; that for some time he had beheld with
 “silent indignation the arbitrary measures that were pursuing by the
 “ministry; that he had often drooped and hung down his head in
 “counsel, and disapproved by his looks those steps that he knew his
 “avowed opposition could not prevent; that, however, he would do so
 “no longer, but openly and boldly speak his sentiments; that, as to
 “the incapacitating vote, he was of the same opinion with Lord Chat-
 “ham; that he considered it as a direct attack upon the first princi-
 “ples of the Constitution; and that if, in giving his decision as a
 “Judge, he was to pay any regard to that vote, or any other vote of
 “the House of Commons in opposition to the known and established
 “laws of the land, he should look upon himself as a traitor to his
 “trust.”

Lord Mansfield followed in a speech that was somewhat on the
 fence, and then that brought out Lord Chatham again in his greatest
 force. He said, “But, my Lords, I stated those events merely as facts,
 “without the smallest addition either of censure or of opinion. They
 “are facts, my Lords, which I am not only convinced are true, but
 “which I know are indisputably true; for example, my Lords, will any
 “man deny that discontents prevail in many parts of his majesty’s
 “dominions, or that those discontents arise from the proceedings of the
 “House of Commons, touching the declared incapacity of Mr. Wilkes.
 “It is impossible; no man can deny a truth so notorious; or will any
 “man deny that those proceedings refuse by a resolution by one
 “branch of the Legislature only, to the subject, his common right. Is
 “it not indisputably true, my Lords, that Mr. Wilkes had a common
 “right, and that he lost it in no other way but by a resolution of the
 “House of Commons. My Lords, I have been tender of misrepresent-
 “ing the House of Commons. I have consulted their journals, and

“ have taken the very words of their own resolution. Do they not tell
 “ us in so many words that Mr. Wilkes, having been expelled, was
 “ thereby rendered incapable of serving in that parliament; and is not
 “ their resolution alone, which refuses to the subject, his common right.
 “ The amendment says further that the electors of Middlesex are de-
 “ prived of their free choice of a representative. Is this a false fact,
 “ my Lords, or have I given an unfair representation of it? Will any
 “ man presume to affirm that Colonel Luttrell is the free choice of the
 “ electors of Middlesex? We all know to the contrary; we all know
 “ that Mr. Wilkes, whom I mention without either praise or censure,
 “ was the favorite of the county, and chosen by a very great and
 “ acknowledged majority to represent them in parliament. If the
 “ noble Lord dislikes the manner in which these facts are stated, I shall
 “ think myself happy in being advised by him to alter it. I am very
 “ little anxious about terms, provided the substance be preserved, and
 “ these are facts, my Lord, which I am sure will always retain their
 “ weight and importance in whatever form of language they are de-
 “ scribed. Now, my Lords, since I have been forced to enter into the
 “ explanation of the amendment, in which nothing less than the genius
 “ of penetration could have discovered an obscurity, and having, as I
 “ hope, redeemed myself in the opinion of the House, having redeemed
 “ my motion from the severe representation given of it by the noble
 “ Lord, I must a little longer entreat your lordship’s indulgence. The
 “ Constitution of this country has been invaded, in fact, and I have
 “ heard with horror and astonishment that very invasion defended on
 “ principle. What is this mysterious power, undefined by law, un-
 “ known to the subject, which we must not approach without awe, nor
 “ speak of without reverence, which no man may question, and to
 “ which all men must submit? My Lords, I thought the slavish doctrine
 “ of slavish obedience had long since been exploded; and when our
 “ kings were obliged to confess that their title to the Crown, and the
 “ rule of their Government, had no other foundation than the known
 “ laws of the land, I never expected to hear a divine right, or a divine
 “ infallibility, attributed to any other branch of the Legislature. My
 “ Lords, I beg to be understood; no man respects the House of Com-
 “ mons more than I do, or would contend more strenuously than I
 “ would to preserve them their just and legal authority. Within the
 “ bounds prescribed by the Constitution, that authority is necessary to
 “ the well-being of the people; beyond that line every exertion of power
 “ is forbidden—is illegal; it threatens tyranny to the people and de-
 “ struction to the State. Power without right is the most odious and
 “ detestable object that can be offered to the human imagination. It
 “ is not only pernicious to those who are subject to it, but tends to its
 “ own destruction. It is what my noble friend, Lord Lytleton, has
 “ truly described it, *Res detestabilis et caduca*. My Lords, I acknowl-
 “ edge the just power, and reverence the Constitution of the House of
 “ Commons. It is for their own sake that I would prevent their assuming
 “ a power which the Constitution has denied them, lest by grasping at
 “ an authority which they have no right to they should forfeit that

“ which they legally possess. My Lords, I affirm that they have betrayed
 “ their constituents, and violated the Constitution.” * * * * *
 “ Now, my Lords, I affirm, and am ready to maintain, that the late
 “ decision of the House of Commons upon the Middlesex election is
 “ destitute of every one of those properties and conditions which I hold
 “ to be essential to the legality of such a decision. It is not founded
 “ in reason, for it carries with it a contradiction that the representative
 “ should perform the office of the constituent body. It is not sup-
 “ ported by a single precedent, for the case of Sir Robert Walpole is
 “ but half a precedent, and even that half is imperfect. The inca-
 “ pacity was indeed declared, but his crimes are stated as the grounds
 “ of the resolution, and his opponent was declared to be not duly
 “ elected even after his incapacity was established. It contradicts
 “ Magna Charta and the Bill of Rights, by which it is provided that no
 “ subject shall be deprived of his freehold unless by a judgment of his
 “ peers or the law of the land; and that elections of members to serve
 “ in parliament shall be free. And so far is this decision from being
 “ submitted to by the people that they have taken the strongest meas-
 “ ures and adopted the most positive language to express their discon-
 “ tent. Whether it will be questioned by the Legislature will depend
 “ upon your Lordships’ resolution; but that it violates the spirit of the
 “ Constitution, will, I think, be disputed by no man who has heard this
 “ day’s debate, and who wishes well to the freedom of his country;
 “ yet if we are to believe the noble Lord, this great grievance, this
 “ manifest violation of the first principles of the Constitution, will not
 “ admit of a remedy, is not even capable of a redress, unless we appeal
 “ at once to heaven. My Lords, I have better hopes of the Constitu-
 “ tion, and a firmer confidence in the wisdom and constitutional
 “ authority of this House.”

The precedents to the same effect in this country are, the case of William Blount who was tried on articles of impeachment before the Senate of the United States in 1804, or rather he was arraigned on articles after he had ceased to be a Senator, for acts done while he was a Senator from the State of Tennessee. The Senate decided that it had no jurisdiction of the case.

Mr. TILDEN :

Didn’t it decide that it had no power to impeach a Senator at all ?

Mr. CURTIS :

That question was involved, and so was the other, and they passed upon it generally.

Mr. TILDEN :

I have not examined any of these cases with reference to this discussion, but I have had occasion to heretofore, and if I recollect right, the question involved in Blount’s case was the power to impeach a Senator of the United States; whether that office was one within the purview of the Constitution in its provisions in respect to impeachment.

Mr. CURTIS :

Yes, both the questions were involved, and the Senate gave a general judgment on a plea to the jurisdiction. Blount put in a plea to the jurisdiction, raising both these questions, and the Senate passed a general judgment on that plea, refusing to entertain jurisdiction in the case.

Mr. TILDEN :

Then it did not necessarily go on any one of the questions.

Mr. CURTIS :

It went on both of them necessarily.

Mr. TILDEN :

It may have gone on either.

Mr. CURTIS :

The presumption of law is that it went on both. The case of O. B. Matteson in 1856 and '7.

Mr. TILDEN :

Matteson resigned.

Mr. CURTIS :

See the Washington Globe of that year. Matteson was sought to be expelled from the House for acts of turpitude committed by him prior to his last election, and this whole subject, and this precedent of Wilkes, came directly into view in the discussion in the House, and on the strength of that precedent the House declined to act upon the subject at all. Another precedent to what I refer is the case of Judge Smith in this State, County Judge of Oneida County, who was tried before the Senate and removed from office. The date I have not, but in this case a portion of the charges involved matter that occurred before the commencement of the existing term of office. He had been in office more than one term. These charges were withdrawn, and the judgment proceeded only on misconduct in the existing office.

Mr. TILDEN :

Do you remember when that removal was?

Mr. CURTIS :

I say I have not the date.

Mr. ANDREWS :

It was three years ago.

Mr. CURTIS :

It is a recent case.

Mr. HILL :

It was tried in about 1866 or '7.

Mr. ANDREWS :

It was tried during the war or soon after the war.

Mr. STRAHAN :

1866 or '7.

Mr. HILL :

Do you mean to say that the charges were withdrawn after removal?

Mr. CURTIS :

I am not informed, but I am informed that a portion of the charges was withdrawn.

Mr. VAN COTT :

Mr. Chairman, undoubtedly the inquiry must have relation to the powers of the body instituting it, and if it is shown that the inquiry here is taking a range beyond any constitutional function of the Legislature, it should be restricted.

Mr. NILES :

Mr. Van Cott, will you be kind enough, there are two or three questions I want to call Mr. Curtis' attention to, and it is possible *you* may want to refer to them a little. I meant to have asked them before you commenced at all. I want to call your attention, Mr. Curtis, to the 1st section of the 6th Article of the Constitution: "The Court for the trial of impeachment shall be composed of the President of the Senate, of the Senators or a major portion of them, and the Judges of the Court of Appeals, or a major part of them. On the trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the Court," and so forth. Now, section 11, of that same article is, "Judges of the Court of Appeals and Justices of the Supreme Court may be removed by concurrent resolution of both Houses of the Legislature if two thirds of all the members elected to each House concur therein, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journal, nor, unless the party complained of shall have been served with a copy of the charges against him, and shall have had an opportunity of being heard." Now, the question I wanted to ask was, first, whether you understand that the proceeding in each of those cases is the same, that is, as to the admissibility of evidence and the rules of evidence; secondly, whether you understand that in the second case it is to be a trial before the Legislature, or whether the Legislature is to take the proof against the party and then make up its charges, and serve them on him, and let him come and say what he has to say in answer; and in order that you may

understand exactly, what I want to get into my mind, if, in the second case, it is to be a trial subject to the rules of evidence applicable to the first case, is it not a Court of one hundred and sixty odd members, with no prosecuting officers, and with possibly not a Judge in the whole Court, and, if not, where do the prosecuting officers come from, or where is the power to prosecute; that is that arm of the proceeding—the prosecution?

Mr. CURTIS :

I understand that by the Constitution of this State there are two modes in which a Judge of the Supreme Court—to confine it to a Judge of the Supreme Court—may be removed from office; first, he may be impeached, which is a solemn accusation on articles, and before a Court which is described in the Constitution, and that according to the Common Law and usages and precedents, that trial is conducted by a Board of Managers appointed by the House, who are the accusers; then I understand that there is another mode of renewal, and that is by a concurrent resolution of the two Houses, but the Constitution requires that that shall be on notice to the party, that he shall have a copy of the complaint, and, as I read the Constitution, there must be a trial; he must be heard, and vindicate himself from that complaint.

Mr. TILDEN :

Do you mean by trial—?

Mr. CURTIS :

An investigation.

Mr. STRAHAN :

When does the trial take place; is it this proceeding here, or is it a trial before the body?

Mr. CURTIS :

I take it to be a trial before the two Houses; it is for anybody to come and promote the prosecution that may see fit; these gentlemen or anybody else who may be petitioners; this Constitution differs in that respect, from the one under which I was taught and under which I lived until I was 50 years of age; by the Constitution of Massachusetts, a Judge can be removed by the Legislature passing an address to the Governor, and then the Governor removes him; the address is the real, virtual thing that removes him; it has always been a defect in that Constitution, that it did not require a service of a copy of the complaint on the accused and therefore no trial; but this Constitution is different; this Constitution requires that the complaint shall be served, or he shall be furnished with a copy, and it implies that he shall be heard in his defence; but, as respects this question, that is now under consideration by the Committee, I do not see that it makes any difference; I should construe the removing power, in both

these aspects, as having the same bearing on this question as to whether it shall go behind the present term of office.

Mr. TILDEN :

Since this question has been raised, I think it would be proper for me to say, considering that I was present on the occasion when that clause was first adopted, and voted on all the various propositions in reference to it, what I deemed to be the consideration and the circumstances under which it was adopted; in the Constitution of 1821, there was a power of removal broad and general, as Mr. Curtis states to be the fact and is the fact, in Massachusetts; that continued until subsequent to the removal of Mr. Morris from the office of recorder of this city; I speak of that event, because it happened to me to have participated in the controversy out of which that removal grew, as actively as I have ever done since; Mr. Morris was removed by a secret vote of the Senate on the recommendation of Governor Seward, the doors being closed and without being heard.

Mr. CURTIS :

That was under the old Constitution?

Mr. TILDEN :

Yes, sir; that was under the old Constitution; thereupon, within a few months they elected him Mayor of the city of New York, and a few years afterwards an amendment was passed, prescribing the form to some extent, in which removals should be made; when the present Constitution of the State came to be formed, Mr. Morris was a member of that body, with his eyes wide open to the possible injustice that should be done to a public functionary, if he should be removed in too summary a manner, and it will be found that on several occasions during the discussion of this part of the Constitution, Mr. Morris attempted to restrict the power.

Mr. HILL :

It is a pity he did not succeed.

Mr. TILDEN :

He attempted to restrict the power, by defining the case in which it should be applied; he failed in that; I don't think with my friend here, that it is a pity; it would not become me to say it was a pity, because, although personally in sympathy with Mr. Morris, I voted against all his propositions of that sort, believing that the people have some interest in these questions, and that the great right of removal is not to be frittered away or broken down, for the sake of saving an individual a possible portion of the term of his office; Mr. Morris then endeavored to provide for something in the nature of a trial; he offered an amendment giving not merely the opportunity to be heard, but to introduce witnesses; that was voted down once, and I think twice. and I shall be found recorded against his motion, the object of that

convention being to preserve this power in its broad and general form. I would not have taken the liberty to state this, but my friend, Mr. Niles, proposes a question to Mr. Curtis, and it may be proper, at this early time, to draw the attention of the members of the Committee to the journals of the convention and to the debates, which will illustrate the true meaning of that body in this provision, then first incorporated into the Constitution of the State; it does not contemplate a trial; it does not contemplate the introduction of witnesses, but merely a hearing, merely a notification to the officer, and an opportunity for him to present his answer to the allegations.

Mr. HILL :

And not to introduce witnesses ?

Mr. TILDEN :

Not to introduce witnesses.

Mr. ANDREWS :

Suppose that he denies the statements that are put forth in the secret counsel in the investigation, which shuts people out ?

Mr. TILDEN :

The Constitution does not give him the right to introduce witnesses.

Mr. ANDREWS :

Then he must be impeached without a hearing ?

Mr. TILDEN :

I am not speaking of impeachment.

Mr. ANDREWS :

Removal ; it is the same thing.

Mr. TILDEN :

I beg my friend's pardon ; it is not the same thing.

Mr. ANDREWS :

It amounts to the same thing.

Mr. TILDEN :

It does not amount to the same thing ; it amounts to it with this qualification, and the old power that Mr. Curtis alluded to, of removal by address, and the only restrictions upon that are, first : That the persons accused shall have a hearing, that is, shall be allowed say—

Mr. NILES :

Allowed to make his explanation.

Mr. TILDEN :

Allowed to make his explanation ; and secondly, that when the body

comes to its judgment upon the case, or its decision, that it shall enter upon the journals, the grounds upon which it acts. Those are the only restrictions contained in that provision.

Mr. HILL :

Was it in any manner foreshadowed by those debates, as to what would be a ground of removal? Is it a mere question of propriety or partisan will? There is where I say that it would be best if they had prescribed what was a cause for removal.

Mr. TILDEN :

There is nothing limiting the ground of removal, but, while, of course, you are undoubtedly right that it would be convenient to have the case defined—the difficulty of making a definition that would be complete, and that would answer all exigencies of human society in every possible contingency—has deterred and prevented, and, indeed, made it, perhaps, the larger and wiser expediency to leave it to the judgment and the conscience of the body when it may arise.

Mr. STRAHAN :

Does the Constitution in that respect contemplate a removal for causes for which a person may be impeached?

Mr. TILDEN :

It contemplates a removal for any cause.

Mr. STRAHAN :

Causes for which he may be impeached?

Mr. TILDEN :

Yes, sir.

Mr. STRAHAN :

So, that in the one case he may have a trial under the Constitution, and in the other he may not.

Mr. TILDEN :

It allows him to be removed for causes for which he could not be impeached, and it allows him to be removed for causes for which he could be impeached.

Mr. HILL :

A glorious state of uncertainty.

Mr. TILDEN :

It leaves it to the judgment and conscience of the body exercising the power.

Mr. ANDREWS :

Whenever the politics of the State changes, you may turn a Judge out, or any body else; that is the idea.

Mr. NILES :

That he can be removed, by a concurrent resolution for bribery and corruption in office, or for general cussedness.

Mr. TILDEN :

He can be removed for any cause that, addressing itself to the judgment and conscience of the body possessing the power, makes the public welfare require his removal.

Mr. CURTIS :

Will you permit me to ask you a question ?

Mr. TILDEN :

Certainly.

Mr. CURTIS :

Why does the Constitution direct that the complaint shall be served on him, if it is a broad, discretionary power of removal, for any reason on which the Legislature may see fit to act, why is the complaint directed to be served upon him ; for I have always understood that that is the turning point in respect to the distinction between such a broad, discretionary power, that it is capable of no control, and a less extensive power. I have always understood that it turned upon that, whether he had had notice, whether he had had an opportunity to appear and answer that which is assigned as the reason why he should be removed.

Mr. TILDEN :

I will say, if the Constitution in this provision had contemplated a trial, it would have contemplated a great absurdity.

Mr. CURTIS :

That may be.

Mr. TILDEN :

It had already provided a mode of trial to be carried on according to the procedure applicable to such case. To have provided two trials before two separate bodies, acting separately, would have been a very rank absurdity, in my judgment.

Mr. STRAHAN :

Isn't it about as absurd that it should provide a mode by which a person might be tried, giving him a right to a trial and then providing another means by which he may be deprived of a right to a trial.

Mr. TILDEN :

No ; at least it has not been deemed absurd ; it has existed in this State for fifty years.

Mr. STRAHAN :

I don't know as it is, but it occurred to me if the renewal clause contemplates removal for causes for which a person may be tried by impeachment, upon articles of impeachment, that it might possibly defeat what ought to be, if it is not, a right under the Constitution.

Mr. TILDEN :

The Constitution of 1821, like the Constitution of 1846, provided for impeachment. The Constitution of 1821 provided also for removal; there was no qualification, no restraint, not even those restraints that address themselves to the judgment and conscience of the bodies exercising the power beyond the general considerations that address themselves; that is to say, it had no constitutional requisition to do any act before it exercised the final power. The Constitution of 1846 differs from the Constitution of 1821 only in this particular, that it requires publicity, that it requires that opportunity be given for explanation; it requires that the body exercising the final judgment put itself on record to stand up for the public opinion of mankind for the ground on which it acts.

Mr. ANDREWS :

Is there any appeal from the decision ?

Mr. TILDEN :

None whatever.

Mr. ANDREWS :

If the Democratic party should get two-thirds of the Legislature, and should turn around and vote every Republican Judge out of a seat, is it anything more than a matter which they have sole control of, and which you have no business to inquire into ?

Mr. TILDEN :

They would have the physical power to do it. It would be an immoral exercise of the power.

Mr. ANDREWS :

That may be. Who is to be the judge, if a man cannot be heard and the case cannot be tried, and he cannot disprove anything that anybody chooses to swear against him ?

Mr. TILDEN :

If the gentleman will excuse me—I am not making the Constitution. I am speaking of it as it exists historically.

Mr. ANDREWS :

I understand that, I take a different view of it; that is all.

Mr. NILES :

Mr. Curtis, I would like to ask just one other thing. If the proceeding

is to be the same under this Eleventh Section, that is a trial, and if the causes are to be the same, and only the same, what do you understand was the purpose of the Constitutional Convention, after having provided for a trial before Judges and Senators embracing a number of thirty or thereabouts, and providing for prosecutors and all the details, the manner of conducting it, and so forth—what do you understand was the purpose they had in view in providing for another trial, limited to precisely the same grounds before a Court with the Judges excluded, and multiplied to one hundred and sixty in number and without providing any prosecutors whatever.

MR. CURTIS :

I understand that the purpose was that there should be a choice ; that there should be two modes of removing a Judge from office, or removing any of the incumbents of office ; that there might be cases in which the solemnity of an impeachment would be proper, such as misconduct in judicial office involving questions of law, involving very important questions of law to be investigated where the assistance of Judges would be important to the justice of the case ; that there might be other causes of removal where no such solemnity of trial would be necessary, but yet an investigation would be necessary ; such as, for instance, that the party had become incapacitated by disease or by vice.

MR. NILES :

I get your idea then, I guess. You don't claim that the trial under this last section is limited to the same legal proof that would be required on an impeachment ?

MR. CURTIS :

No, sir.

MR. NILES :

But that it is limited to that which would incapacitate him while in office.

MR. CURTIS :

Recollect that the restraint is in the whole removing power, whether the removing power is by one machinery or the other.

MR. HILL :

If the Judge is to be removed by reason of this other power in the Constitution for things less than what it takes to impeach him, or of less importance than what it takes to impeach him ; in other words, mere matters about which men may differ as to acts of propriety, does not that furnish us stronger reason why we ought not to inquire into things that took place prior to his election, the people having judged of those acts of propriety.

Mr. TILDEN.

That is a subject that we will discuss when making up our opinion. I intervened to make this statement because these questions were raised, and I did not understand that they were the exact points that counsel had been desirous to discuss.

Mr. CURTIS :

And I did not venture any discussion upon them until the question was put to me as to what my own views were.

Mr. STRAHAN :

They don't come properly within the line of discussion laid down here.

Mr. TILDEN :

If they were to be discussed it would scarcely be becoming in me in the relation that I bore to those provisions, to omit to throw what light I can upon them.

Mr. NILES :

I understand, for instance, that a Judge could be impeached for imbecility coming upon him, that is, softening of the brain, or anything of that kind, any misfortune that might come on him and render him wholly incapable of performing his duty.

Mr. CURTIS :

Ordinarily, I suppose that impeachment does not apply to such cases. In the practice of free governments it has been generally applied to misconduct.

Mr. NILES :

You do not understand that it applied to mere misfortunes like those.

Mr. CURTIS :

I do not.

Mr. NILES :

And yet that would be one of the cases provided for in this other section, so that a Judge might be removed notwithstanding the misfortunes.

Mr. CURTIS :

Yes, sir ; but there has been a precedent, and I think it was the case of Pickering, District Judge of the United States, in New Hampshire, a half a century or more ago.

Mr. CURTIS :

He was impeached for an incapacity, and his incapacity was such

that he was utterly incapable of instructing counsel in a defence, and yet it was required to go on in a due form because there was no other way.

Mr. NILES:

On the ground of public necessity.

Mr. CURTIS:

I suppose that this power of removal in all our Constitutions in which it is required, that notice shall be given to the party, means that whether he is capable of entering upon his defence or not that he shall have notice, and if he is capable he shall have means to defend himself.

Mr. NILES:

That the peril of impeachment will not follow from mere misfortunes.

Mr. CURTIS:

No, sir.

Mr. TILDEN:

In this case of Mr. Morris, who was the Recorder, he went into the Seventh Ward to Mr. Pierce, who was the tobacco inspector, or who had been, and who had a package of papers in his possession sealed up, and partly, perhaps, by persuasion, and partly by urgency, got possession of those papers. Then, subsequently, before a Grand Jury, when he was charging it, he made some defence of his action. These were the grounds on which Governor Seward in 1841 recommended to the Senate that he be removed, and he was removed by the Senate in secret session.

Mr. STRAHAN:

Under that particular—

Mr. TILDEN:

Under the Constitution of 1821, and that is what lead to the qualification in the Constitution of 1846; and in the Convention of 1846 Mr. Morris was there in person, and he finally voted against this article, because he was not satisfied with the shape in which it was. In the Constitution of 1821 the Democrats of that day had inserted this power of removal, though eventually with the concurrence of the great Chancery and Law Judges, who were members of that Convention. Chancellor Kent voted for it, and I believe Chief Justice Spencer did, and it stood until it was altered by amendment in 1845, subsequently adopted into the Constitution of 1846. The object of the change was to secure publicity, to call the attention of the removing body or bodies to their action, and to require them to make record of their decision.

Mr. HILL:

And yet they, having removed him in secret session, to remedy that abuse, all they did was simply to serve charges upon the man; all they required by the new Constitution to remedy those evils was serving a copy of the charges upon the man that he might know for what he was removed.

Mr. TILDEN:

Well, that he might be allowed to answer. My recollection is that Morris was not allowed to answer.

Mr. ANDREWS:

In other words, it discriminates on one side and not on the other. That is a new clause, is it not; as it stands now it is rather a new clause in our Constitution?

Mr. TILDEN:

It has been there twenty-six years.

Mr. ANDREWS:

It is in a little different shape, isn't it?

Mr. VAN COTT:

No, not at all.

Mr. TILDEN:

No, it is exactly in this respect as it was in 1846.

Mr. VAN COTT:

I was remarking, when I was interrupted, that if this inquiry took a range beyond the function of the Legislature, of course the Committee would arrest it, but if the inquiry was relevant to the exercise of any legislative function, than it was proper. Of course I shall not undertake to determine, as to between the Committee and the House, what the power of the Committee is, as derived from the House. You have the resolution of the Assembly under which you now act. You are the Judges, here at least, and the conclusive Judges, of the extent of your own functions as a Committee, but when the inquiry arises upon the powers of the House, and the relevancy of testimony offered to powers which the House itself, whose organ you are, may exercise, then the question of legislative power becomes one very proper to be considered. Now if I am right as to the facts, a memorial was sent to the House alleging that certain abuses had existed in the administration of justice in the city of New York. The expression was quite as general as that, and I was very much struck in looking in Howell's State Trials after this inquiry was sent down by the Committee, to see that the communication to the Legislature had adopted literally the terms of the charges made against Lord Bacon in the House of Commons; it was in a sentence, that certain abuses had grown up in the Court of Chancery in the

administration of Justice. If I am right as to the facts, that memorial, thus calling the attention of the Legislature whose power it was, and whose duty it was to inquire, that memorial thus calling the attention of the Legislature to the subject of inquiry, was referred to its Standing Committee on the Judiciary, and that Committee was authorized to sit here and to pursue the inquiry here by sending for persons and papers. Now, if I am right as to those facts, the function of this Committee upon that reference is, to pursue just that inquiry, and to receive any evidence relevant to that inquiry, namely, whether abuses have existed in the administration of justice in the city of New York. that inquiry may have a three-fold purpose under the Constitution. That relations of the Legislature to the administration of justice is three-fold ; first, it has the power to prefer articles of impeachment ; second, the power to remove by joint resolution ; third, the power by legislation to correct abuses in the administration of justice where a case does not exist for exercising the power of impeachment or the power of removal ; and if this inquiry terminated at last in showing the Legislature that abuses have existed in the city of New York in the administration of justice in regard to the appointment of Referees, in regard to the appointment of Receivers, in regard to making allowances, in regard to issuing the writ of injunction, it would accomplish a great purpose by putting the Legislature as the result of that inquiry into a situation to exercise the legislative function by proper legislation to correct those abuses. The question is whether the Legislature has restricted the power of this Committee in pursuing this inquiry, or whether the Committee is to restrict these powers of the Legislature in pursuing this inquiry. The proposal is that this Committee shall stop the inquiry at the point of the first of January, 1869, and although abuses lie back of that, of an aggravated character, which are clearly within the range of the legislative function, if not within the range of the other two functions I have adverted to, yet this Committee will arrest the inquiry and restrict the Legislature in the exercise of its legislative function for the correction of those abuses.

Mr. NILES :

Let me see if I understand you. I don't put you out, I hope, by the question ?

Mr. VAN COTT :

Not at all.

Mr. NILES :

Do I understand you to say, that supposing the state of legislation was such that a bad Judge in office in 1868, had perverted his office to the purposes of injustice, even though the next year a good Judge was elected, who from that time on had never perverted them, yet you claim that the Legislature has a right to know what perversion may arise, in order to provide against the possibility of a bad Judge getting into office next year, and perverting his office.

Mr. VAN COTT :

You have hit it exactly.

Mr. HILL :

There is no doubt about our power, under the resolution to do it.

Mr. VAN COTT :

Then it seems to me, if it is in the power of the Committee to make this inquiry, for either of these three purposes, the exclusion of evidence that is relevant to any one of these great functions of the Legislature, is an assumption on the part of the Committee to arrest the action of the Legislature, in the direction of legislative and of judicial reform ; and it seems to me that a Standing Committee of the House, having been instructed to make an inquiry, the purpose of the inquiry not being pointed out, but the purpose being just as broad as all the functions which the Legislature can exercise on the subject matter of that inquiry, it would be a very strong act on the part of the Committee to arrest inquiry, and say, " No, we will pursue the inquiry according to certain ideas of our own, of what it may be proper for the Legislature to do, but the information that we communicate to the Legislature shall not go beyond that point." Now, it seems to me that that is substantially an answer to the objection to this evidence, unless the Committee is prepared to take that responsibility ; and it seems to me that it is a very serious responsibility to take, in view of our experience for the last few years in this city, not only of judicial abuses, but other abuses. It seems to me to be a time for inquiry when the public attention is aroused, and when there is a prevalent feeling in the community, of the necessity to discuss and to correct wrong, and that it would be an indiscreet thing, to say the very least of it, for this Committee to attempt to stop an inquiry in that direction. But I have a word or two to say upon this question, of the power of impeachment and the power of removal, and upon the relevancy of this evidence, even with all the limitations which my learned friend, in his very able argument, attached to both the impeaching and the removing power. What is the fundamental distinction between a removal and an impeachment? The fundamental distinction is, that an impeachment is always punitive ; a removal may be punitive, or merely remedial ; or it may be both. It may involve no measure of punishment. It may be exercised purely on grounds of public necessity, and public policy, without imputation of crime or wrong to the incumbent of the office removed under this power. The power of removal may be exerted against an incumbent having a chronic disease, and in the judgment of the medical profession, permanently disabled from effectively performing the duties of his office ; or it may be exercised upon an incumbent who has become insane ; neither of which implies official misconduct.

Mr. TILDEN :

Or an imbecile man ?

Mr. VAN COTT :

Or an imbecile man. The testimony of Mr. Tilden has been given as to what occurred in the Convention of 1846. I happened to be on the Judiciary Committee of the last Constitutional Convention. This judiciary article was before the Committee for nearly a year. This very question, among other questions, of course, was under consideration in that Committee, for the whole judicial article was overhauled with a view of improving it, if possible. The debates of Mr. Tilden's Convention were ransacked; the Constitution of 1821, and the debates of that period were ransacked; and those debates, and the experience of the State, were appealed to, to enable us to see whether any improvement could be made in the structure of this part of the judiciary article. That part of the article is unchanged. It not only happened to me to have been in the Judiciary Committee itself, but I was one of the Special Committee that had charge of the literary part, if I may so speak, of the entire Constitution. We put it all in shape. Mr. Curtis, Judge Comstock, myself, and two other members, had the revision of the entire Constitution as to style, and this part of it, of course, among the rest; and this part of the Constitution, as you will see by comparison, was left intact; all the rest of the Judiciary Article was changed. Many of the provisions of the old Constitution which were not changed in substance were changed in expression, but we did not attempt to change either the substance or the expression of this part of the Constitution relating to removal from office, because we thought it had been made as perfect as it could be made, and it was left to stand upon the ground upon which it was put by the Convention of 1846, that framed it. You have in the article two provisions: one, of a Court to try for mal and corrupt conduct in office; another, conferring a power to be exercised by the Legislature, to accomplish precisely the same effect, but to accomplish that effect by a different method; and not only by a different method, but for the same or for different reasons.

Mr. TILDEN :

But not a disqualification.

Mr. VAN COTT :

But not a disqualification; it is a mere removal from office. The removal under an impeachment is for crime, and is by way of punishment, whether it extends to disqualification to hold office,—re-eligibility or not.

Mr. TILDEN :

You don't mean to say that you cannot impeach for a thing that is not a technical crime?

Mr. VAN COTT :

No, I don't mean to say that; not a mere technical crime.

Mr. TILDEN :

You are right in saying that it may be punitive, but, after all, the leading idea of removing by impeachment is public necessity.

Mr. VAN COTT :

That is the paramount idea. There are some things that must be left greatly to discretion. The Pardoning Power is one of them—the power of the Governor to extract the sting from your proudest enactments. The crime may be of the gravest, and yet all your criminal law may be nullified by placing in the Governor the function of granting pardons ; because there does exist a reason why, finally, that power should be lodged somewhere in the Government to prevent great and irremediable injustice, or what may be regarded as great and irremediable injustice, by the exercise of that power. And so with reference to removals from the judicial office. There are many things that are not technical offences which disqualify for judicial office. Those things cannot be defined ; we cannot foresee them, we cannot provide specially for them. We are compelled to lodge somewhere in the Government, for the safety of the State, the discretion to exercise the power of removal for undefined causes. We must guard it against abuse. We did not guard it against abuse in 1821. We guarded it against abuse in 1846. The Constitution requires a large vote to remove by resolution ; a larger vote than is required to remove on impeachment. That is the first check against an abuse of the power. Then publicity is required. We are to give the party sought to be removed an opportunity to be heard, by stating the complaint against him. He is to have his day to be heard ; and we are required to record the ground on which we remove him. And the additional security remains, of re-eligibility to the party removed, so that the judgment of the Legislature may be rejudged by the people. Now, we have those several provisions as an effective check upon the abuse of this power. The Legislature that judges is itself to be judged. What it does it does in the open day. What it does it is required to do by so large a majority that it is hardly possible to abuse the power for the purposes of faction. And finally, what it does thus in the open day, and with this restraint as to numbers, it does subject to appeal to the people ; the legislative judgment being itself subject to correction (the removed party being re-eligible to office as in the case of Wilkes) by a popular vote, and a final judgment that may override the judgment of the Legislature.

Mr. TILDEN :

If you will excuse me, you will find in, perhaps, two-thirds of the constitutions of the different States an express provision that a man shall not be expelled from a legislative body—I do not speak of judges, I do not speak of other functionaries—twice for the same offence. It is not in the Constitution of this State ; it is in those of many of the States. It seems to have been a restriction adopted under

the Wilkes case. You will find nowhere, I think, a provision any broader than that.

Mr. VAN COTT :

If I am right, Mr. Chairman, as to the distinction between the power of impeachment and the power of removal, you at once see the relevancy of this inquiry. The argument of my learned friend is, that if, between sundown of the day in November when Judge Barnard was re-elected in 1868, and the 1st of January, when he took his seat for a new term of office, he had sold justice publicly from the bench day by day, and had advertised in all the great newspapers of the country that he would sell justice from the bench, and had sold it as meat is sold in the shambles, he could not have been impeached for it.

Mr. TILDEN :

That is between the election and the new term.

Mr. VAN COTT :

The contention on the other side is, that you can only remove a Judge during his existing term, for an act done during the existing term. But what is the value of this power of removal, if between November, when a Judge is re-elected, and January, when he takes his seat, he may be notoriously guilty of forgery, guilty, as I said, of the public sale of justice, and there is no power to remove him? The argument of my learned friend is that the Court of Impeachment could not touch him, that the Legislature, in the exercise of its power of removal, could not touch him, and therefore evidence offered to this Committee, if this inquiry had begun in January, 1869, as it might have done just as well as in January, 1872, that the incumbent had been guilty of the most flagrant crimes, and had utterly lost the public confidence, would be irrelevant to any action the Legislature is competent to take, and to any investigation it may pursue for the purpose of taking such action.

Mr. NILES :

Does indictment, or even conviction of crime, disqualify a Judge from exercising his office?

Mr. VAN COTT :

Not at all; you may put him in prison. He might have been indicted after the election in November and convicted of a felony, and sent to States Prison to undergo his sentence for a crime committed prior to November; might have remained in prison for several years, and come out and taken his seat on the bench. Now, sir, it appears to me that the consequences not that may result, but that must result, from this sort of limitation upon the legislative power, is the most conclusive answer to the objection taken to the power, and to the attempt to limit this inquiry preliminary to its exercise. It is supposed that there are some precedents which touch this case.

It seems to me that nothing could be more utterly misconceived by my learned friend than that the precedents he has cited touch this case. The case of Blount went off without a determination of the question. The point taken there was that he was not an officer within the sense of the impeachment article of the Federal Constitution. The other objection was also taken, but—

Mr. NILES :

He was a member of the very Court of Impeachment, was he not ?

Mr. VAN COTT :

He was a member of the very Court of Impeachment.

Mr. TILDEN :

A member of the legislative body, but not an officer ?

Mr. NILES :

He was a member of the Senate.

Mr. VAN COTT :

Yes, sir. Nothing was determined in that case ; you cannot see what point was determined, and what you can make a precedent of. Then as to the case of Matteson, who was re-elected. A motion to expel him, for acts done prior to his election, was laid on the table, and was not taken up again during the session. The question was not passed upon ; the resolution was merely laid on the table.

Mr. TILDEN :

He had resigned at the former session for fear of expulsion, I believe ?

Mr. VAN COTT :

I so understand it.

Mr. TILDEN :

But had not been expelled originally—he resigned ?

Mr. NILES :

Went back to his constituents, and they returned him.

Mr. TILDEN :

No ; they did not immediately return him. This was a subsequent Congress, was it not ?

Mr. VAN COTT :

I think it was a subsequent Congress. Then the case of County Judge Smith ; the charges that related to acts prior to his existing term were withdrawn ; the question was not passed upon ; so that nothing was determined bearing upon the question here ; there is nothing in it in the nature of a precedent. But I submit that if there

had been an express determination of this question, as a legislative question, for reasons that I will advert to presently, it would not have determined this case; but nothing was there determined. Now the case of Wilkes was the only other case cited, and it was much dwelt upon by my learned friend. There are several things about that case that you will find very embarrassing if you attempt to extract any principle from it in support of my friend's objection. Wilkes was expelled from a Legislative body of which he was a member, the members of that body refusing to sit with him, not for an act which he had done as a member of Parliament, but for a libel for which he was liable civilly and criminally elsewhere.

Mr. TILDEN :

Entirely outside of his legislative capacity.

Mr. VAN COTT :

Entirely outside of his legislative capacity. They expelled him; he was re-elected to the same parliament. Now you will observe that the power to expel him for the libel was not denied, and it was not denied therefore, that he was properly and entirely ejected from his seat. Well, he was re-elected, and he was again expelled, and it was not denied that he was out, legally out again. It was not alleged that parliament had gone beyond its power in expelling him, because he was re-elected, and the re-election went upon the ground of an actual legal vacancy in the office that had to be filled by an election. And he was expelled a third time and elected again. He was now in for a fourth time; every expulsion being admitted to be legal, because the legality of the election afterwards proceeded upon the idea that there had been a vacancy in the office created by the expulsion, that a new writ for an election was properly issued, and that the office was filled by each successive election.

Mr. TILDEN :

On the fourth time that could not be the case, because no vacancy happened. No writ was sent for a re-election, for the reason that at that time the House of Commons admitted his antagonist, although he received a very small vote. No vacancy therefore resulted, and no writ was issued.

Mr. VAN COTT :

He was voted for at the same election with Col. Luttrell, who received some 300 votes, while Wilkes received 1,100.

Mr. TILDEN :

There could not be a fifth election. They admitted the man that got the fewest votes.

Mr. VAN COTT :

It appears therefore that the legality of the expulsion of Wilkes for

a libel, for an act done prior to the second election, and prior to the third election, was not called in question. The precedent of Wilkes shows that he could be expelled over and over again, lawfully expelled, thereby creating an actual vacancy, to be filled by an election, for an offense committed prior to his last election. It proves that, if it proves anything under the sun. Now what was the difficulty in the Wilkes case? It was that the House of Commons, worn out by this contest—and it was a very arbitrary House of Commons unquestionably that drew down upon it the censures of CHATHAM and of CAMDEN—the House of Commons, worn out by this popular contest, undertook to declare that Wilkes had not only been expelled from the House of Commons, but that he was not eligible to re-election. Now our constitution expressly provides against their re-eligibility in the discretion of the Court of Impeachment. It allows the judgment on an impeachment to render the person removed from office ineligible; but in the absence of such a constitutional provision, unquestionably the incumbent removed from office would remain as a citizen, possessed of all the legal and constitutional rights of a citizen. Therefore no vote of the House of Commons could render a member, who had been expelled, ineligible to re-election. And the whole point in the Wilkes case was just that; that whereas, he was eligible to re-election and received 1,100 votes, his competitor, who received only 300 votes, was declared by the House of Commons to be elected, which was an utter violation of the British constitution. It struck at the very existence of the House of Commons, and it rendered powerless the constituency of the House of Commons. It was a gross invasion of the constitution that caused a great popular outcry, and called forth the denunciation of such men as CHATHAM and CAMDEN.

Mr. NILES:

Your theory is, that although they admitted the right of the House of Commons to expel him, they insisted on their right to return him.

Mr. VAN COTT:

Yes, sir; they insisted that Wilkes was re-eligible under the constitution. If Wilkes remained eligible, then the vote for him was not void; he had a majority and was elected, and the only manner in which the Commons could deal with him was to expel him again, and continue to expel him, just as often as he was elected.

Mr. NILES:

The people were more willing to continue that game than the Commons were.

Mr. VAN COTT:

Yes, sir; and getting tired of the contest, the Commons resorted to the unconstitutional expedient of giving his seat to Col. Luttrell.

Mr. TILDEN:

Without meaning to express any opinion on the present case, I call

your attention to the provisions in the different Constitutions of the States, which provide expressly in respect to the legislative bodies, that a member once expelled and re-elected shall not be expelled a second time for the same offence; so far as it gives any authority, whether that is not an authority in favor of the power, unless there is an express provision against it.

Mr. VAN COTT:

Undoubtedly. It is a plain declaration of the law, that without the inhibition, a member may be expelled, again and again, for the same offence. That is guarded against by those express constitutional injunctions that that shall not be done. Of course, it clearly implies the existence of the power in the absence of such an inhibition.

I think I have sufficiently answered some of the observations of my learned friend upon the supposed condoning power of a popular vote, by pointing out the distinction between the power to impeach and the power to remove on joint resolution, but it seems to me that a speculative idea has been pushed to the extreme of refinement upon certain democratic notions. This condoning power of a popular vote—what does it amount to? The argument don't go far enough, if there is anything in it. A Judge commits an impeachable offence, and the people vote to re-elect him, and that is a condonation of that offence, is it? That is the argument, that it is a condonation of that offence.

Mr. CURTIS:

No. I did not put it upon that ground—condonation.

Mr. VAN COTT:

Oh, well, you did not use that expression.

Mr. CURTIS:

I said it was not necessary to inquire or know whether they condoned one thing or another. The necessary presumption is that they pronounce him a fit person to hold the office.

Mr. VAN COTT:

The proposition was put in the form that all official wrongs done by the incumbent were condoned; in that sense, I mean, were condoned in the sense that they could no longer be inquired into for the purpose of punishment. Well, a condonation of judicial corruption is no more inferable from an election than a condonation of the crime of burglary, is it? Here are two things that are recognized in law as crimes.

Mr. NILES:

Mr. Curtis claimed that notwithstanding a man were guilty of burglary, or anything else, prior to his election, you have not a right to expel him, if the people chose to send him to do their business, and make him their agent. He don't claim that it is condoned in the sense that

you can not punish him legally. You may send him to States prison for his burglary, and keep him there until his term is out, and then let him come back to his seat.

Mr. VAN COTT :

No; the argument, if it amounts to anything at all,—of course I am not speaking now of the form of the argument, and the mode in which the question is begged, but I am looking into the grounds of the argument,—if it amounts to anything, it is the judgment of the people that the person elected is a very proper man; no matter what he has done, he is a very proper man to be left free to discharge the functions of a Judge of the Supreme Court. If it amounts to anything at all, it is an expression of the popular will that the party elected shall discharge those public functions; because you know, under the English law, a party was not at liberty to decline office; for a long time a person elected to office was bound to serve in the office and it was a public offence not to serve. The argument then comes to this: that if the Judge committed burglary before his term of office, he shall serve out a term on the bench, and shall not be indicted and made to serve out a term in the States prison; because such is the will of the people.

Mr. TILDEN :

In that connection, I call your attention to this circumstance, that the election takes place in a district, that the Judge of the Supreme Court, after he is elected, administers justice through every part of the State, and over all its citizens, so that the whole people of the State have an interest in the manner in which he performs his functions. The legislative power that may remove him, or the impeaching power, if he be removed by impeachment, respects likewise the people of the whole State. Now, how is it possible to insist that an eighth part of the State, by a popular vote, may obliterate from the Constitution the impeaching power and removing power in which the whole people of the State act. Must not all the parts of the Constitution stand, stand consistently with each other, and each have its operation, and while the electoral power exists in a locality the impeaching and removing power exist where the Constitution has placed them.

Mr. VAN COTT :

Yes, sir.

Mr. CURTIS :

It has not been contended by me, Mr. Tilden, that the popular sanction, the popular will, operates any further than that he shall enter upon the office, and that he shall enter upon it as a fit and proper person to exercise it. I expressly stated that after he had entered upon it, it was for the impeaching and the removing power to act upon any offences that he might commit hereafter.

Mr. TILDEN :

That simply, then, assumes that the impeaching power and the removing power cannot act on anything that may unfit a man to satisfactorily discharge the duties of his office unless that event occurred after his election. It assumes that.

Mr. NILES :

Mr. Curtis admits that the removing power emanating from the people outside of his district may call him to account, because they have an interest in his action, the minute he begins to act, if he acts unjustly.

Mr. CURTIS :

Suppose, Mr. Tilden, he has never been in the office before, and that he is a notorious States prison convict, and yet he is chosen to be a Judge of the Supreme Court.

Mr. TILDEN :

Then by all means he should be removed.

Mr. CURTIS :

And that nevertheless the people choose him to be a judge ; what are you going to do in that case, with the power of appointment vested in one body in the State, and the power of removal vested in another.

Mr. TILDEN :

Both of those powers must co-exist, both have their operation ; one cannot obliterate the other ; and while the people of a locality, so long as the individual is not disqualified, may elect him, the people of the State who are interested in the mode in which he should perform his functions, may remove him.

Mr. NILES :

Mr. Tilden, let me ask you one question right here. Suppose there is a charge of malfeasance in office, against a judge, and that is brought up at the very election, and he says: " I pledge you, if you will elect me, I never will repeat those wrongs, but hereafter I will do exact and absolute justice everywhere and every time." And then he enters upon his office, and continues in it two or three years doing that—doing absolute justice—can you then start up an application for removal, and remove him for those things which he promised to reform?

Mr. HILL :

Of course, Mr. Tilden must argue that way.

Mr. TILDEN :

Supposing, for instance, a judge before the election should commit murder, or commit burglary, or commit some scandalous act that should disqualify him from usefully executing the functions of his ju-

dicial office. Suppose that he should do it as in the case put, between November and January, so that the people could not by possibility have known of it at the time they elected him. Now that is pushing the argument as to the conclusive effect of the judgment of the people in electing him, to what seems to me a very great extreme, to suppose that the removing power of the State cannot take hold of this evil and redress it, because this man has been elected judge. The people of the State have an interest, especially under our very peculiar system, which I am very happy to say I voted against in all its parts, in electing Judges to exercise their duties over the whole State. The Judges elected in St. Lawrence district may act upon us here, upon all our rights, may act on the great corporations or associations just as much as any other Judges in the State.

Mr. NILES :

But don't you, in arguing in that way, lose sight wholly of the distinction between the judge and the man?

Mr. TILDEN :

No ; I do not.

Mr. HILL :

You take the extreme case presented by Judge Van Cott, of a case where it occurred between November and January. Now, the case put by the other side is this, the case where a man had not held an office at all, but had been a convict, and then elected. Now, he still presents a further case, where a man had been thus guilty before election promised, as he says, reform, was elected, served for three years faithfully and well, and then at the end of three years it is proposed to impeach him for things that he did before his election.

Mr. TILDEN :

We remove him.

Mr. HILL :

Impeach him ; let us take that now. What do you say of such a case as that?

Mr. TILDEN :

I say it is purely a hypothetical case.

Mr. CURTIS :

So are all the others.

Mr. VAN COTT :

I was going to say the case put by Mr. Curtis was either an impossible case, or it was a case which demonstrated the necessity of those constitutional provisions. I think it is an extravagance to suppose that the people would elect a man who is a States Prison convict. I say in the second place, that if they could, in the mere exercise of

the voting power, elect a States Prison convict to the office of Supreme Court Judge in the city of New York alone, that the constitution of the whole State of New York gives to the representatives of all the people of the State of New York the power to put the States Prison convict off the Bench ; and if anything was necessary to demonstrate the propriety of that provision in the constitution, the supposition of such a case is just that thing.

Mr. HILL :

Do you claim that they could impeach him for that ?

Mr. VAN COTT :

No ; I don't claim that they could impeach him, for you make a distinction between cases where a man can be impeached and one who can be removed. I say that the power of removal is broader than the power of impeachment.

Mr. HILL :

In such a case as that he could not be impeached ; why ?

Mr. VAN COTT :

Because it is not an act done in his office.

Mr. HILL :

Then is not the argument of Mr. Curtis sustained.

Mr. VAN COTT :

No ; I think not. Mr. Curtis does not distinguish between the office and the term. The constitutional provision is that a Judge may be removed from the judicial office, for judicial offences. He is Judge of the Supreme Court ; he has been guilty, while wearing the ermine of his office, of crimes in office ; not in the present term, to be sure. He has never been out of office since his first election ; the terms have run together ; there has been a process gone through to continue him in that office.

Mr. HILL :

Supposing there are eight years in which he holds the office ?

Mr. VAN COTT :

I think that being in office there is still a power to punish him by removal from the office for an offense committed in the office.

Mr. HILL :

I thought it was not primitive.

Mr. VAN COTT :

I am not speaking of the power of removal now. When it is done under impeachment, it is by way of punishment. Suppose it was a forgery, not committed officially ; is it an impeachable offense ; I

am not sure that it is not. I am not sure that a Judge might not be impeached for a forgery committed while in office.

Mr. HILL :

I think so myself.

Mr. VANCOTT :

Now, suppose he was guilty of forgery prior to his re-election, but while in the office, and there were no other punishment. Suppose the Constitution had limited the punishment of forgery in the case of a Judge; to removal from office. Well, he would not then be indictable. He has committed the offense, but is still an incumbent of the judicial office, and is still the subject of punishment. Now, I see the line of distinction that you see there, and this course of argument may be a refinement; I don't press it with that confidence with which I put the other argument, that it is clearly within the power of removal—whether he may be impeached for an act done during a preceding term is open to the sort of criticism and question which you make about it. I recognize the distinction; whether it is entirely sound or not I am not prepared to say; but I do make a distinction between an office and a term, as to the power of removal. But I wish now to say a word upon another point. Supposing it to be true that he cannot be impeached after January, 1869, for an official act done in December, 1868. I am not talking now about the power of removal by joint resolution; but supposing the inquiry to be limited, as it is not limited, I apprehend, to the inquiry whether an impeachable offense has been committed; then the question is whether evidence of acts done prior to January, 1869, would be relevant to the question whether he was guilty of an impeachable act done after January, 1869. Now, you, as lawyers, are perfectly familiar with the class of cases where you may show contemporaneous acts in order to infer intent. In a replevin suit—and you have tested it a great many times—brought by a vendor to recover goods from the vendee, obtained on fraudulent representations, you cannot only prove the fraudulent representations made at the time of the purchase of the particular goods by the defendant, but you may prove representations made by him, and purchases made by him within any reasonable period that will throw light upon the very transaction in controversy—that is one case, by way of illustration. Suppose we were to show that in December, 1868, Judge Barnard had received, for rendering a particular judgment, a sum of money; that we had proved the payment of it into his hands, or offered to prove it; and that you already had before you evidence that judgments had been rendered in January succeeding, and along through 1869 and 1870, of the same general character, for the same party, and judgments open to very severe criticism as gross departure from law, or as straining of the law, and the remedy, I ask you if it would not be perfectly competent, to prove the sale of the judgment in December, to infer the sale of the judgment in January. Now this distinction, of course, must be recognized in any candid discussion: a

Judge is not impeachable for every erroneous judgment he renders; if so, no Judge would be safe, for judgments from all the courts are reversed for error, excepting the judgments of the final Court of Appeals, and the Judges of the final Court of Appeals are constantly differing between themselves as to what is the law; and if a mistake of the law were a ground of impeachment, as I said, no Judge could continue to hold his seat. Of course, I do not contend for any proposition so extravagant as that. What I contend for is that a judgment may be in such gross violation and subversion of the law that there arises in the mind, at once, upon a statement of it, a violent suspicion that it is an intentional subversion of the law, and that the judgment has been rendered under some sinister influence.

Mr. HILL :

Standing alone, it might not amount to much.

Mr. VAN COTT :

Standing alone, it might not amount to much, but if you had a series of judgments of the same character; if they happened to be where the same attorneys were employed, or where the same parties were suitors, or where there was something peculiar in the relations between the Judge and the suitors or their counsel, or where some special friend was to derive some special advantage from the judgment being rendered in that way, instead of being rendered according to law, there would arise out of a series of such cases a strong impression, it might be an uncontrollable presumption that the Judge had wilfully perverted the law.

Mr. HILL :

And therefore it is admissible, even if the acts proved before, were not of themselves under the view contended for, admissible as acts of impeachment.

Mr. VAN COTT :

Exactly.

Mr. HILL :

It would be admissible as characterizing the other acts which took place in 1870 as impeachable.

Mr. VAN COTT :

Yes, sir: you have got my view precisely, that although you may not prove an act as an impeachable act, you may prove it with its circumstances as reflecting upon the motives with which the subsequent acts were done, so that, in that point of view, I conceive that this evidence may be perfectly competent, irrespective of the constitutional views I have expressed. You are not deciding the case; it is a Committee of Inquiry. It is a committee seeking for light. It is merely to put the Legislature in a position to see whether there is a case for

further inquiry. It is not a judgment. If the mere reception of this evidence were necessarily to condemn the Judge, I should hesitate long about offering some of the evidence that has been offered in this case. If upon the mere reception of it, you might be asked to say at once, "the accused is guilty," I should, having a conscience of my own, hesitate to ask you to receive it, and draw the inference of guilt. But I say that, as an Investigating Committee, you may have to grope your way to the discovery of truth, for light, with a view of determining the question of a further and an ultimate inquiry, and that everything which tends to throw light upon the charges which are before you, is to be received in aid of the determination of the question as to a further and final inquiry into the case.

Mr. CURTIS :

There are one or two points which have been suggested by my friend on the other side. I should like to say a word in regard to them, and only a very few words. I have made no distinction between the power of impeachment and the power of removal, in respect to the matters on which either can be exercised. I suppose there is no distinction between them in this respect as regards this question; I suppose that they were introduced into the Constitution in order that there might be a choice to apply the one or the other according to the nature of the case, and the circumstances and the object to be accomplished. Now, in regard to the inquiry that is here going on, as having a bearing upon future legislation, I should like to ask if the memorial which was presented by the Bar Association, and which was referred to in the resolution, is here, because I think it may throw some light upon the duties and powers of the committee.

Mr. TILDEN :

I will state that the Committee do not deem themselves limited by the resolution.

Mr. CURTIS :

Excuse me, I don't mean to argue that they are limited, I only asked if it was here with a view of seeing what was asked for.

Mr. TILDEN :

The resolution, I think, instructs us to report by bill or otherwise.

Mr. CURTIS :

I understand that. Now I do not suppose that I am here as representing Judge Barnard, or that Judge Barnard is here for the purpose of aiding or obstructing your inquiries into matters of legislation. We are here in respect to specific charges which are presented to this Committee, accusing him in every instance of mal and corrupt conduct in his office as Justice of the said Supreme Court. Now the gentleman will not say that that is presented here, and these charges

prosecuted, and this evidence offered with any view to effect anything but his impeachment or his removal.

Mr. NILES :

Can not the Committee make inquiry and investigation concerning the inquiries therein contained as to the administration of justice in the city and county of New York, and call for persons and papers, and report by bill, or otherwise.

Mr. CURTIS :

Undoubtedly you may have a function to discharge under your resolution, of going into matters of abuses in the administration of justice in the city of New York, to see what bills you will present to the Legislature but under these charges I understood that we were to consider this question of whether the Legislature would or could either impeach or remove, for causes that did not arise within the term of the existing office, and it was entirely with reference to that that I presented my argument.

Mr. TILDEN :

So we understand, and it is very proper and gratifying that this discussion has taken place, and the Committee do not feel themselves limited by the fact that gentlemen have been admitted on both sides to discuss these questions, or that evidence has been allowed to be introduced pro and con. They do not feel that that at all wears away by any gradual process, or by any implication, the general power of the Committee.

Mr. CURTIS :

I am not seeking to limit the powers of the Committee. I have nothing to do with the exercise of the powers of the Committee, so far as it bears on future legislation. If the Committee think that it is needful as a matter of inquiry to go into things, with a view of future legislation, that relate to the particular conduct of this Judge, this individual who is here as a quasi respondent, under charges, why that is another matter, but I am here considering, as I suppose, what you will recommend the Legislature to do with this particular Judge, either in respect of the matter of impeachment, or in respect of the exercise of power of removal, and that in that regard this question becomes an important one to be considered, and to be passed upon by the Committee.

Mr. TILDEN :

And it is very proper that it has been discussed.

Mr. CURTIS :

With your legislative function I have nothing to do, at least at present.

Mr. TILDEN :

Since this has been discussed, and I have taken some part, I desire to say that I do not mean to intimate any decision or opinion of my own upon the questions which have been suggested between these two different modes of procedure in the event that there is any case calling for either.

Mr. CURTIS :

I hope that you will not. I hope that you will not construe the constitution merely and solely, or chiefly, by what may have taken place in this Convention, or in that, because it is a question which I humbly submit to you ought to be decided mainly upon principle, so as to ascertain, and to give an enlightened opinion to the Legislature, how these two powers of appointment and election, and the power of removal by the one or the other process can be exercised without interfering with each other.

Mr. TILDEN :

Of course the contemporaneous history of the provisions of the constitution is a great aid in expounding and interpreting it.

Mr. CURTIS :

Yes, it is some aid.

Mr. FLAMMER :

During the introduction of evidence on matters connected with Judge Cardozo, there were some books produced from the District Attorney's office, here in the city. Since this Committee has been instructed to investigate the District Attorney's office, we went into an examination of these books, although not directly connected with the charges against Judge Cardozo, and it seems to me that is optional with these Judges to be here to make any suggestions in reference to any matters which may come up, directly touching them, but it is not to be inferred that only those matters are coming up now that do directly touch them. The privilege is granted them to be present here, and in any matters which may come up touching them they can make any suggestions, or suggest the names of witnesses to be called who can give proof on the matters charged against them.

Mr. CURTIS :

Yes, sir; I understand that you are carrying on two functions at the same time.

Mr. NILES :

We thought it would be fairer—thought it would be a great aid to us to call upon the Bar Association to make these specific charges.

Mr. CURTIS :

You gave them the opportunity, and they embraced it; and you

gave us the opportunity to be present and make suggestions and we are glad to embrace it. Now, in regard to my friend's answer to my position, that I do not provide for the period between the election and the first of January, when the party enters upon the office, and that he may have committed great judicial crimes in the mean time ; it is easy to state extreme cases, and we have all suggested one, one extreme case, and another another ; but in respect to the exercise of the different powers of the government, they must be construed and applied so as not to interfere with each other, and my answer to this difficulty, if it be a difficulty, is two-fold : first, that you must have a rule, a principle to apply to the adjustment of these two powers to each other, the right to appoint and the right to remove, and that the adoption of the principle which I have suggested—that is, that the appointment or choice by the electors is conclusive upon the question of the fitness of the party to enter upon an office is the only one that will preserve the authority of the electoral body, free from interference by the legislative body, or either branch of it. Extreme cases may arise where it may be impossible to reach a case that ought to be reached, but you must have a rule for the construction and application of the constitution, and I submit that the only one is that the electors having pronounced their will that this man shall enter upon that office, that that is conclusive of his fitness to enter upon it.

Now, in regard to the suggestion that the electors are only a portion of the people of the State—that is, that they are simply the electors of a district, and that the Judge exercises his function over the whole State, and the Legislature representing the whole State, exercises a power over the mode in which he exercises those functions. It does not matter whether the power of appointment is vested in 500,000 men living in the city of New York, or as vested in one man, the Governor or anybody else. It is the power of appointment, and not the person in whose hands it resides, that is to be considered ; and how that power is to be exercised, and have all its rights and its capacities fully developed to its full and proper scope, and reconcile it with the power of impeachment or the power of removal.

Mr. VAN COTT :

Will the committee allow me to make a suggestion that I intended to make before, with reference to harmonizing the powers under the constitution. Of course, we are to take the whole constitution, and we are to give effect to the whole. The people pass upon the qualification of a candidate for office, upon general grounds, and upon what they ascertain of his qualifications. Suppose a man is elected to the office of a Supreme Court Judge who is an alien by birth, and has not been naturalized. He would hold the office under an expression of the popular will until it was ascertained by some proper inquiry under the constitution, that he ought not to hold it ; but it having so been ascertained that there are valid constitutional reasons why he should not hold the office, the elevation to it by the people would go for nothing.

The candidate gets the expression of the people that, for aught they

know, he is competent to hold the office of a Supreme Court Judge, but an inquiry made by a competent body under the constitution, results in ascertaining some vice, some fault, which furnishes a constitutional disqualification to continue to hold the office; and that being ascertained and declared, a removal from the office follows as the constitutional consequence. Now, I think it extravagant to say that the people on every re-election of a Judge, institute such a minute inquiry into the manner in which the Judge has discharged the functions of his office as to preclude other and further inquiry by a tribunal constituted by the constitution itself to make that inquiry; and, if upon such inquiry made by a competent body, the unfitness is ascertained, then the two provisions of the constitution are in perfect harmony. That inquiry results in ascertaining that there are reasons which the people have not passed upon, and which are to be passed upon under this provision of the constitution, by which the office is to be vacated by a vote or judgment of removal.

Mr. HILL :

If they can be removed for these matters for which they can not be impeached, matters about which there may be dispute, as to the propriety of their conduct, not criminal in itself, then do not they conflict? the people pass upon it one way, and the Legislature, elected at the same time, pass upon it in another way.

Mr. VAN COTT :

No; because the very same people have said by their constitution, "We elect the Judge, but we leave to you, under the responsibilities of your office, and under the limitations of the Constitution to prevent abuses in the exercise of your power to remove—we leave to you the after inquiry, whether there is something that has escaped our attention, and requires the removal of the Judge whom we elected." Take the case put by my learned friend, of a man who is a convict, and who came into the district from the States prison; they make an inquiry, and ascertain a fact which was not publicly known before; and upon the responsibility of their place, and subject to the power of the people to review their judgment, they declare whether the Judge shall continue to hold the office, or be removed from it.

Adjourned to March 19th, 10 A. M.

*In the Matter of Charges Preferred against Hon. G. G. Barnard,
Justice of the Supreme Court. Before the Committee of As-
sembly.*

NEW YORK, March 19th, 1872.

LOUIS A. VON HOFFMAN, a witness called upon behalf of the prosecution, sworn; examined by Mr. VAN COTT.

Q. What is your business in this city? A. Banker.

Q. How long have you been a banker here? A. Since 1850, the 1st of January.

Q. Did you, in the summer of 1870, have in your hands stock of the Erie Railway Company, belonging to foreign owners? A. Yes, sir; I had.

Q. To what amount? A. I believe it was about 100,000 shares.

By Mr. TILDEN:

Q. That is 10,000,000 at par? A. Yes, 10,000,000 at par; \$100 a share.

Q. That was in the Summer of 1870? A. It was in the early part.

Q. Do you remember having sent a part of that stock to the office of the Erie Railway Company—60,000 and some shares? A. Yes, sir.

Q. For what purpose was it sent there? A. To be registered at the Farmers' Loan and Trust Company.

Q. It was sent there for identification for the purpose of that registration; or was there a branch of the registry at the Erie Railway office? A. No, sir; the register was at the Farmers' Loan and Trust Company; the Farmers' Loan and Trust Company would not receive any shares for registration, except from the office of the Erie Railway Company, so that we had to send them to the head office of the Erie Railway Company, in order to get them registered at the Farmers' Loan and Trust Company; we did that in order to satisfy our European correspondents that they were genuine shares.

Q. How long was it before that stock was got back into your possession, or the possession of those whom you represented at that time? A. It never got back into my possession, because the attorney of my friends took the matter in hand, and they only got lately in possession; it was early this year.

Q. Do you remember what number of shares were thus left, which were seized under the process of the Court? A. About 60,000 shares. You asked me whether I sent up 60,000 shares?

Q. Yes, sir. A. I sent up more.

Q. How much was it? A. I sent up 16,000 shares, and those were returned to me duly registered at the Farmers' Loan and Trust Co., and when I sent up the next batch of 60,000 shares they were seized.

Q. Did you retain the balance of the stock that you held for foreign

owners here, or did you send it out of the country? A. I sent it back to England.

Q. Why did you send it back? A. Because I was afraid it might be seized in my office.

Q. Were you advised professionally that it was unsafe to keep it here; do you remember? A. No; I don't think I was.

Q. You acted on your own conviction? A. I acted on my own conviction.

Q. Have you had extensive transactions as a banker for foreign houses? A. Yes, sir; I believe my transactions have been pretty extensive.

Q. Through how many years? A. Since I was established here; and during the last ten years they have increased in amount.

Q. And they have been very large, have they not? A. Well, that is a relative question, but I consider them pretty large.

Q. Mention, if you please, the relations of your foreign business—with what localities? A. My largest transactions are with London, some with Holland, and with Germany, and with Switzerland.

Q. Have you had occasion within the last two or three years, with reference to your business, and with reference to your transactions with foreign dealers in your business, to observe with any care, the course of the administration of justice in the city of New York? A. Well, I believe the case that you mentioned about the Erie shares created at least unfavorable impressions about the way that justice is administered here; that it hurt my business with my foreign connections. They refused to entertain negotiations on that ground.

Q. In your judgment, what effect has that distrust, of which you speak, had upon the investment of foreign capital in this city? A. Well, I believe it has reduced the amount which would have been invested otherwise.

Q. To a trifling, or to a very considerable extent? A. I could not tell to what extent.

Q. What has been your own judgment and feeling with regard to the security of capital in this city, in connection with the administration of justice here? A. Unfavorable, sir.

Q. And if you had occasion to express an opinion on that subject to foreigners with whom your business transactions have been connected, what would the opinion be on that subject? A. That they would be exposed here to chances of injustice, which, in other countries perhaps, they would not be liable to.

[No cross-examination.]

GEORGE OPDYKE, a witness called on behalf of the prosecution. sworn, examined by Mr. VAN CORN:

Q. You have been a resident of this city for how many years? A. With the exception of six years, from 1826 to 1832, I have been here since 1823.

Q. Have you been largely engaged in commercial business in this city as a merchant; I don't speak of the recent times, but for how many years as a merchant, prior to your engaging in the business of banking? A. Yes, sir; since 1832, up to the time I commenced the banking business. It is four years since that I commenced banking business.

Q. You commenced the banking business in 1868? A. Yes, sir.

Q. And are now a banker in this city? A. I am now in the banking business; yes, sir.

Q. Have your foreign business and correspondence both as a merchant and banker been large? A. Not very large in the mercantile business. I have imported quite a large amount of goods, but not to compare with some of the large merchants of the present day.

Q. Is a considerable part of your banking business foreign? A. Our banking business, one important branch of it, is the negotiation of securities, especially railroad securities, which we negotiate at home and abroad.

Q. That is to say, the sale of American securities abroad? A. Yes, sir; we have sold a good many abroad.

Q. Have you taken an interest in public affairs in this city for a considerable number of years past? A. Yes, sir; it is my nature to do so, and I have done it.

Q. And has your observation extended to the course of judicial administration, as well as of municipal and national? A. Necessarily.

Q. Can you state what is the general feeling in commercial and financial circles, as to the course of judicial administration in this city? A. The general opinion is very adverse to that administration in the city.

Q. Can you speak of a general sense of security, or insecurity, connected with the administration of justice in this city? A. I think the general sense of business men is one of insecurity.

Q. What effect has this upon the investment of foreign capital in American securities? A. I think it has been a stumbling block in the way.

Q. Have you had occasion, in your own business, to see that? A. I have; yes, sir.

Q. Causing a disinclination to invest in American securities by foreign capitalists? A. If you allow me to state, generally—

Q. State in your own way. A. In our negotiations abroad we have carried them on in Germany mainly, some in France, and have made efforts in Great Britain. We have found the feeling, in regard to the Judiciary in this State, as we generally term it—referring, it is presumed, more especially to the city, a feeling of insecurity in regard to the action of the Courts in this city—has prevented us in several cases from consummating negotiations; and the feeling is felt, but to much less degree, in Germany also.

Q. Have these transactions, which have thus been interrupted and defeated, been large or small in amount? A. Well, the negotiations of the securities which I have named, the efforts to negotiate have gen-

Q. Is not that impression well nigh universal? A. So far as it has come to my knowledge, it is.

By Mr. HILL:

Q. And haven't you found this fact, that where this public impression has been created against the officials, that generally old partizans have manifested the worse feeling? A. As a general rule?

Q. Yes. A. I don't think I have. I have seen many instances of this bitter manifestation, but I don't think it can be called a general rule at all.

By Mr. VAN COTT:

Q. You are aware that Judges of the Supreme Court out of the city of New York are men of both parties, are you not? A. Yes, sir.

Q. Are you aware of any general influences that you have spoken of, affecting Judges of the Supreme Court of either party, out of the city of New York? A. No; I should say, however, as a proviso to that answer, that I am very much less familiar with their action than those of the city, and so are those with whom I hold intercourse, but the general impression is that there is no distinction created by the political opinion of the Judges, that as a rule, they are purer in the country.

Q. You have spoken of the action of the Court relative to the Erie Railway Co., in connection with that distrust of the Court. Did you refer to the action of Judges Barnard and Cardozo in granting injunctions and Receivers in connection with the affairs of the Erie Railway Co., or was your observation a more general one? A. It was more particularly based upon the facts that you mentioned.

Q. You have been asked in regard to the bar, in its connection with the administration of justice in the city of New York. Have you heard the names of any particular lawyers mentioned in connection with the distrust felt for the Courts? A. The action of counsel?

Q. Yes, sir. A. Well, David Dudley Field, and Field & Shearman have been often mentioned in that connection.

By Judge BARNARD:

Q. Do you know how many years Judge Ingraham has been on the bench? A. I don't know as I remember; a long while.

Q. About 40 years? A. It is a long period; the number I don't remember:

LUCIEN BIRDSEYE, a witness called on behalf of the prosecution, sworn and examined by Mr. Stickney:

Q. You are a counsellor at law? A. I am, sir:

Q. And have been so for how many years? A. More than 25.

Q. Practicing in the city of New York? A. Yes sir.

Q. You have also held what official positions? A. I have been at one time a Justice of the Supreme Court for the Second District.

Q. Have you frequently or not appeared at Court before Judge Barnard? A. I have.

Q. Will you state what has been his habitual demeanor on the bench of the Supreme Court? A. Very rapid in the manner of transacting business, and many times accompanied with remarks that attracted attention as somewhat aside from what seemed to me the ordinary course of judicial proceedings.

Q. Remarks of what character? A. Well, witty, generally.

Q. Of what other character, dignified or decent, or undignified or indecent? A. That would be a matter of opinion. They seemed not to me to be what I had been accustomed to see in judicial officers; the character of them attracted my attention as somewhat out of the ordinary course.

Q. Will you state what remarks you have ever heard Judge Barnard make on the bench as to taking care of his friends? A. I think I have heard him say in the course of judicial proceedings when motions were being called in the Chambers, that he ought to take care of his friends, or that he did take care of his friends, or that it was his business to take care of his friends; some allusion of that kind.

Q. Referring to private matters or his judicial action? A. It was in connection with matters which were brought before him on the bench.

Q. Will you state if you remember any other particular remarks that you have heard Judge Barnard make while he was sitting on the bench? A. It is difficult, of course, to charge one's mind with things of that kind that run through a number of years, where the remarks were in relation to matters in which I had no interest, not connected with my own case, where I merely sat by to wait until my own case should be heard, reached and disposed of.

Q. Have you any particular remarks now in your mind, that were made by Judge Barnard while he was sitting on the bench? If so, please state them; give the circumstances fully, if you please? A. I recollect one transaction, I think, last May or last June; I am not able to locate the time or anything more than a general recollection; I think in the month of May or June of last spring I was in the chambers of the Supreme Court and heard something that attracted my attention.

Q. From whom? A. From Judge Barnard.

Q. While he was holding Court? A. While he was holding Court; while he was calling the calendar of the Special Term for motions.

Q. A remark made openly and in a perfectly audible tone? A. It was; I heard it.

Q. Will you state what it was? A. I should be glad to be excused from saying.

Q. We feel compelled to ask you to answer. A. As I recollect the transaction, it was this: I was waiting for a motion when the calendar of the Special Term was being called, and some case arose which was a case for divorce; as I recollect the parties, the husband was the plaintiff and the wife was the defendant; it may be that I have reversed that, and that the wife was the plaintiff and that the husband

was defendant, but I am quite sure that the facts were the other way, according to my recollection, though at that period of the matter my attention was scarcely directed at all to what was proceeding in the Court; I was absorbed in some thought either of my own case about to come on, or some other matter, and when my attention was called to it, a gentleman was upon the floor urging the hearing of a motion, who I recollect to have been the counsel for the defendant, the wife, and he said in the course of his remarks that his client denied that she had been guilty of adultery, and was in Court—he had brought her into Court, and the remark which attracted my attention was from Judge Barnard, substantially to this effect: “What of that; do you think I can tell whether she has committed adultery by looking at her?”

Q. Were those the words? A. Those were not the precise words.

Q. Give the precise words as accurately as you can remember them. A. My recollection is, and it attracted my attention at the time, and I think I can not have forgotten it, that the word “screw” was used in the place of “commit adultery,” by Judge Barnard—I may be mistaken in regard to it.

Q. Give the whole sentence as nearly as you can, shape it in his words. A. My recollection of the sentence is, that he said in these words, “What of that,” when the defendant’s counsel stated that his client was in Court, and that she denied committing adultery; he said, “What of that,” and either in substance or what it seems to me, in these words said, “Do you think I can tell whether a woman will screw”—or commit adultery, or some such expression—“by looking at her.”

Q. And had the Court-room the ordinary number of counsel in attendance? A. I think there were from 50 to 100 persons in the room; it was the ordinary attendance on the Special Term day, not at the opening of Court, but after the Court had been in session some time.

Q. And these words were used in such a tone that they could be heard in any part of the room? A. I think in the same tone that the Judge’s declarations were during the rest of the session.

Q. Will you state what has been, so far as you know, the reputation of Mr. Justice Barnard, for official integrity? A. I don’t know that I could answer that question with propriety. I have often heard his course spoken about, and those whom I have heard speak about it have often spoken against it. That is the most I can say.

Q. What have they said, as nearly as you can state? A. Well, I don’t know as I can give any definite words. It is a matter that I have heard talked about in the profession for some time, and I have heard remarks which indicated doubt on the part of those who spoke in regard to the Judge, of one kind or another, but it is a matter which I didn’t so treasure that I can give the words or any names of the persons whom I heard speak in regard to it.

Q. We don’t expect that you can remember particular persons or particular remarks, but what have you ordinarily heard said as to

Judge Barnard's character for official integrity? A. Well, I have heard remarks made questioning it.

Q. Have you heard remarks made to any stronger effect than your answer indicates? What is his general reputation?

Mr. NILES:

What do you mean, for official integrity?

Mr. STICKNEY:

For official integrity. A. Well, I have heard his conduct spoken of.

Q. How; what is his reputation? A. Well, I don't think I can speak in regard to his general reputation. I have often heard members of the bar speak in regard to his course in the courts. His quickness in deciding cases, and sometimes — I don't think I have ever heard the expression of his recklessness in deciding a case. I am quite sure I never have heard anybody use that expression, but it has conveyed to my mind the same result which the use of that word would by another person.

Q. And as to his reputation for integrity? A. I have very often heard his fairness and his judicial impartiality and integrity questioned by those who spoke in regard to it. Whether that would be a general reputation among all who knew him, both those who were favorably and those who were unfavorably disposed towards him, I would not undertake of my own knowledge to say.

By Mr. NILES:

Q. What do you mean by "questioned"—denied? A. I have heard it denied. Yes, sir.

Q. You mean in some exceptional case? A. In exceptional cases.

Q. Haven't you heard the integrity of other judges in this city questioned? A. I have heard the same character of remarks made in regard to other judges. Yes, sir.

Q. Who; how many? A. I have heard the same remarks made in regard to Judge Cardozo; not the same remarks, but substantially of the same character.

Q. Haven't you of others, all through, clear through the whole list of them? A. Oh, no, sir; not through the whole list of them, by no manner of means. I have in regard to two or three of the judges of the city—three or four, perhaps. I think no more than that.

Q. Haven't you heard it questioned as to judges, that from your knowledge of them, and from your experience of human life, you verily believe to be just as upright judges as live on earth? A. I could not say that I have.

Cross-examined by Mr. CURTIS:

Q. Have you not heard imputations of that nature against some of the judges of the Federal Courts of this city? A. No, sir; I don't recollect that I ever have.

Q. Have you not heard as many unfavorable and unkind remarks with respect to the judicial conduct of Judge Blatchford as of any of

the Judges of the State Courts? A. I don't think I have to the same extent.

Q. Have you to any extent? A. I have to a considerable extent in regard to the demeanor of Judge Blatchford on the bench. I have very often heard his course spoken of as not corrupt, but his manner extremely overbearing, and his partiality to persons in the Court noticeable.

Q. You have heard that imputed to him—partiality to individuals practising in his Court? A. Not so much that as an overbearing demeanor towards members of the bar, which did not extend to all the persons before the Court. I may say that I have been very little in that Court myself.

Q. You have heard the talk of the bar on that subject? A. I have. Yes, sir.

Q. Is there not a prevailing inclination in the bar of this city to impute want of official integrity to Judges? A. I don't know that I can say that there is.

Q. Have you not heard a great deal of that sort of thing talked? A. I have in regard to certain persons, but there are Judges of whom I never heard a whisper or suspicion in the least.

Q. Are not those Judges a very small minority in that regard? A. I should not say that they were according to my recollection or my judgment.

Q. With respect to Judge Barnard's mode, or imputed mode, of transacting business, or the mode which you have observed, is he not well reputed for transacting a great amount of business rapidly and correctly at the same time? A. He is certainly well reputed for conducting a great amount of business with great rapidity, and I think his reputation would be that among practitioners of doing a very large proportion of the business that he does with great correctness.

Q. With regard to this remark that you have repeated, the taking care of his friends, didn't you understand it at the time to be a joke, and having allusion to the supposed imputation, out of doors, that he took care of his friends? A. I would not say that that was not precisely what the Judge intended when he made the remark.

Q. Didn't it so strike you? A. Sometimes I think it has; I think sometimes I have not had that impression at the time, although I perhaps ought to have had it when the remark was made. I think there are times when I have heard that remark made in such a way that it seemed to me jocular on the part of the Judge. I think there are other times when it produced upon my mind the effect of being intended not as a joke.

Q. Have you heard it said many times? A. I think I can remember it repeatedly; I can't say how many times; more than once or twice.

Q. Do you mean to give me to understand that it ever produced upon you the serious impression that Judge Barnard meant to avow seriously in the face of the public, that he was animated by a purpose of taking care of his friends, in a serious and improper sense? A. Well,

there are times certainly when I have heard those remarks when it seemed to me that they were clearly designed as humorous or jocular. There are times when, if I can recall my own mental impression, that did not produce such a result on my mind. They may have been intended to do so, but I don't remember that they did.

Q. Did you suppose them to be intended as an avowal of the purpose corruptly to use his judicial power or influence or patronage, for the benefit of his friends? Did you suppose him capable, or any man capable, of making such an avowal publicly? A. Well, sir, I would not undertake to answer that question in the affirmative, that it was designed to make a corrupt use; that he spoke in such a manner as to give the impression that he designed to make a corrupt use of his influence for the benefit of his friends. I would not say that, sir, but there have been, I think, two or three times when the matter was so spoken of as to leave on my mind the impression that his action would be different towards his friends, from what it might be towards other people. I have sometimes had that impression left on my mind.

Q. But as a general thing you have supposed the remarks to be jocular and intended for the moment to amuse, didn't you? A. In many instances—in some instances at least.

Q. In regard to the time when this divorce case was before the court. When was that? A. I can only speak with approximate correctness; it seems to me to have been after the warm season of the year 1871 commenced. I can only recollect what sort of a day it was. The windows I recollect to have been open, and the sun shining brightly outside, and the trees I believe to have been full of bloom, and I think it was during the last year.

Q. It was in the Spring or Summer of 1871? A. It seems so to me; that is what I recollect.

Q. Can you state what month it was? A. As I told you, I think it was either May or June; it may possibly have been the latter part of April; it may have been in July.

Q. What was Judge Barnard holding at that time? A. Chambers in Special Term—motions in Special Term.

Q. He was holding Chambers? A. Holding Chambers; what is generally called Chambers, where motions are heard and disposed of.

Q. Who were the attorneys on both sides in that case? A. I could not tell you.

Q. Can't you name one of them? A. I cannot.

Q. Can you name the parties? A. I didn't hear the name of the parties. As I said to you, my mind was occupied with something else until the discussion had proceeded some distance.

Q. Can you name any lawyer who was present besides those in the room? A. I don't remember that I can at this time.

Q. Who was opposed to you in the motion that you had before the Court? A. That I cannot state; I cannot tell what motion it was.

Q. In regard to the remark itself; I don't understand you to swear to any expression in particular? A. I would not be positive in regard to the precise words which he used, although I have a very distinct

recollection, but I may have abbreviated the circumlocution which was used in the favor of the expression which I have given.

Q. If the remark had been "Do you think that I can't judge whether a woman had committed adultery by looking at her"—if that had been the remark it was a harmless one, was it not? A. Well, that perhaps is a matter of opinion. I should have had my attention attracted to it by that, from any Judge upon the bench, I think.

Q. Well, I should think it would be a very natural remark. As you say, it is a matter of opinion. What is the connection in your mind which leads you to put it in the alternative only, that it was either "screw," or "commit adultery?" A. My recollection, sir, so far as I have any, would lead me to think that the first expression was used, so far as my recollection goes, and yet I know how difficult it is for one to carry conversation and expression for a great period of time in the memory. I therefore only give what I find recorded in my memory. That is the impression that was made.

Q. The one is a vulgar expression and the other is not; one is judicial and the other is not judicial; now, then, what connection is there in your mind, or what fact is there which leads you to put it in the alternative, that he used either the one or the other of those two expressions, one being a vulgar and indecent one, and the other being a perfectly proper and judicial one? A. Well, the memory I have is this, that the remark produced a laugh through the court, and I was led to think upon the dignity of the bench as connected with such a remark in the court. I think the first would not have impressed itself in that way upon my mind, and I recollect a few days afterwards mentioning the circumstances to some persons as to what I had heard in the court, to whom I don't know, nor how it came here I don't know.

Q. If the remark had been, "Do you think I can tell whether a woman has committed adultery by looking at her"—if that had been addressed to counsel who had been doing something that was quite absurd, that remark would have created a laugh in the court, wouldn't it? A. It might have done so.

Q. Suppose the other had been the word? A. I think that would have produced a laugh in the court.

Q. Would it not have produced manifestations of disgust and disapprobation? A. Well, I don't know that it would, sir; I do not know that those who sat in a room of that kind, where an improper remark was made by one who had the entire control of the proceedings, could, in any way, manifest their disapproval.

Q. It is not an uncommon occurrence, is it, for disapproval to be manifested by an audience in court, or by the bar, if anything grossly improper is done by the Judge on the bench? A. I should think it was somewhat unusual for members of the bar to express their disapprobation to a judge of his conduct on the bench, when it consisted of remarks of one character or another; it is, so far as I know.

Q. Now will you tell me how you mean to leave this to be understood; whether the expression was "committed adultery," or the ob-

jectionable expression? A. My recollection, so far as it goes, is that the other was the expression; so far as I can recollect the transaction, that was the expression; I may, however, be mistaken in regard to that.

Q. Do you know what clerk was serving in court then? A. I should presume Mr. Beamish was; I do not know; he has generally been in attendance.

Q. Can you name any of the officers who were in attendance? A. I do not think I can give the name of any officer who has been in attendance there, except Mr. Buchanan, who has been usually in the Chambers for several years.

Q. Do you know the officers by sight? A. Yes, I know them by sight.

Q. In any other place where Judge Barnard was holding court or sitting on the bench, except Chambers, did you ever hear him make any remark of that character, or of a jocose character, or any character which you thought unjudicial or undignified? A. I cannot specify any; I think his manner of calling the calendar at Special Term would be somewhat the same as his calling the calendar of the motions in the Chambers.

Q. Well, I asked a specific question—if you ever heard him make a remark of an objectionable character, or of a jocose character, anywhere else? A. I think I have heard him make remarks of a jocose character, while holding the Special Term for the trial of issues; but whether that would be of an objectionable or improper character, is a matter of opinion.

Q. You cannot recall any now, can you? A. Not specifically.

Q. Chambers in this city is a place of a good deal of confusion, is it not? A. Yes, sir, it is; has been for many years.

Q. And things are not conducted with any great amount of dignity or form—transacted very informally, are they not? A. Sometimes they are somewhat so.

Q. By all judges? A. I could hardly say that I think they are by all the judges.

Q. Well, by most of the judges? A. I should say that they had been at times by some of the judges.

Q. Is it not the daily occurrence at Chambers, in this city, that there is a crowd who come up to get their papers signed, and who must stand around the room; oftentimes more crowded than there are chairs to seat people, and business done very much as it would be in a private room, where there was a great crowd? A. That is very often the case, very often, indeed.

Q. Is there not always prevailing at Chambers, among the lawyers, a tone of remark and allusion—talk that does not prevail in the other branches of the Court? A. Yes, sir; that is a great deal so.

Q. Were you appointed or were you elected to the Supreme Court? A. I was appointed to fill a vacancy.

Q. How long were you on the bench? A. Somewhat less than two years.

Q. Were you a candidate for election after that? A. I was, sir.

Q. Are you a member of the Bar Association? A. I am, sir, but have never attended a meeting of it.

Q. Whom did you first communicate this fact to in regard to this remark? A. I do not know, sir; I probably spoke of it as an anecdote of the proceedings, and I do not know how anybody ascertained that I was aware of it.

Re-direct by Mr. STICKNEY:

Q. Will you refresh your memory, and see if there is any other occurrence that you remember which took place while Justice Barnard was sitting on the bench; and if you remember any other, state it, with the circumstances? A. I recollect some time within a year to have seen one of the attendants of the Court, I think, bring a roll of money to the Judge, and as he took it out and put it in his vest pocket, I remember his saying, "This is drawn on my check; and got out of the bank on my own check." I think I remember a remark of that kind.

Q. Where was that? A. In the Chambers.

Q. Was that remark addressed to the persons who were present in Court? A. I cannot say that it was addressed to anybody; it was made in the ordinary tone in which the Judge would have made any remark in the course of the proceedings.

Q. State if you have any other transaction in your mind; if you have, give it fully, with the circumstances. A. I do not know to what you refer.

Q. Have you any other instance in your mind when you made an application to Mr. Justice Barnard for some order, when he indulged in indecent remarks? A. Well, I have in mind one transaction, but it was ten years ago, in the year 1862.

Q. We wish you to state it; state what took place in Court at that time. A. This was Chambers, also; I am very loth to mention that circumstance.

Q. We feel compelled to require you to state it.

Mr. ANDREWS:

We have no objection; not the slightest objection to any remark made ten years ago on the subject. A. I applied, in the latter part of 1862, to Judge Barnard, for an order appointing a Receiver of property of a defendant who had been sued, judgment recovered, execution issued and returned not satisfied, and the party then examined under proceedings supplementary to execution. When the application came before Judge Barnard he seemed to have a knowledge of the parties.

Q. What did he say? A. He immediately spoke, or very soon spoke in reference to the plaintiff in the case, as if there had been—

Q. Give the words. A. As if there had been adultery between the plaintiff and the defendant's wife, and repeated the remarks; and I had considerable conversation with him before the bench, and after he had granted the order for Receiver I had a private conversation with him on the bench.

Q. Will you begin and give the remarks of the Judge; we wish the words, and we do not care for anything else? A. The plaintiff for whom I made the application was a physician.

Q. What was the first thing he said?

Mr. PRINCE:

Let the Judge go on and give it in his own words. A. I will give the narrative. It is a transaction so very old that I must, of course, speak with great hesitation in regard to giving precise words; I think I can give some words; but I cannot undertake to give them all. I can give the substance of the conversation before the bench, and subsequently with the Judge privately, when I sought a private interview with him very soon after the motion was brought to his notice; he spoke in such a manner as to indicate that he believed the plaintiff had been guilty of adultery with the defendant's wife; and I besought him not to make those remarks, because my client was a professional man, and it would be a serious injury to him to have such remarks as those made in regard to him, and he said it would not; he said the women in Mercer street would come to his office, and fill his office full, rather than anybody being scared away from his office. My recollection is that he used a somewhat stronger expression. I think he said the word the "whores" in Mercer street, but I won't be positive about it; my best recollection would be that he used the stronger expression; and there was something more of the same kind; and I, after getting my order, went to the gate leading to the Judge's seat, and told him that I knew he did not want to do injustice to anybody, and I insisted that he should give me an opportunity of making an explanation of that case to him, and I did go and make an explanation to him.

Q. Have you given, as fully as you recollect them, all the words that were used by the Judge at that time, while he was sitting on the bench? If not, please do so here. A. I do not think I have given them all; I have given the substance of them.

Q. Give them all, if you please, as fully as you can remember them. A. I think that the Judge added this remark—that it was the business of the plaintiff to stop up decayed holes. I went then to the Judge, and told him that he was laboring under an error, and I wished to state the facts to him, and I then repeated to him what I understood to be the manner in which a woman of excellent family connections, and, as I supposed, perfectly innocent and respectable, had been betrayed into visiting a house in Broome street, which subsequently turned out to be a house of ill fame, going there with a person who was a visitor in her house, and being induced to come to the city by the husband, who had obtained a divorce on the ground of adultery, and in that house of ill fame on Broome street. I stated those facts with some earnestness to Judge Barnard, and he then told me that he was very sorry; he had not supposed that was the case at all, but supposed that these people were abandoned people, and insisted upon knowing the name of the attorney who had prosecuted the divorce, and with very much earnestness; and I recollect with what very great

vehemence he brought his fist down upon the table before him, and said, it was a gross case of conspiracy, and that the lawyer who had been engaged in it ought to be compelled to show cause to the General Term, why he should not be desbarred, if he had been guilty of any part of that conspiracy, and expressed an earnestness of indignation, at what seemed to me a conspiracy, which I shall never forget. It was the same thing I have seen in Judge Barnard on more than one occasion, and the whole circumstance was fastened upon my memory in a very remarkable manner. I told the Judge, after giving him the statement, and having heard him declare that he would take proceedings to have the lawyer who had brought such a case, and obtained such a judgment upon such a conspiracy as that, before the Court at the next general term, that I hoped he would not do anything of the kind, for the wife was the only daughter and only sister of her father and her brothers, who were living then in a distant State, and it had created, as yet, no public scandal, and I thought they would rather suffer the injustice than attempt to right it, and that these proceedings would bring out what was entirely unknown to the great body of the public, and I hoped he would take no steps in regard to it; I left him, however, without any statement of whether he would or would not, and I thought for a considerable time that I should hear from those proceedings upon the direction of Judge Barnard, from what he said. I feel bound to say, that when I came to make an explanation to him, his deportment and his conduct in regard to the case was everything which any Judge in the world could have manifested. There was, it seemed to me, a sincere love for the right, and a sincere indignation for what was wrong, and a determination to punish it at whatever expense; and if I have ever mentioned anything in regard to it, it was quite as much for the purpose of stating the last part of what Judge Barnard did on that occasion as the first, and by way of justification to those who imputed evil to Judge Barnard in my presence.

Q. These remarks that Judge Barnard made in open Court, were they made from any knowledge he obtained from reading the papers that were submitted to him, or from any matters that you stated before him? A. They were certainly not obtained from any paper in my possession, or any matters that I stated; they were entirely new and strange to me.

Q. Did he, at the opening, or very soon after the beginning of your remarks, make a remark to this effect; that he knew all about this case; and if not, what did he say of that character? A. I would not undertake to give the words of that part of the Judge's remarks any more than to the effect, that they recalled to his mind the fact, that a charge of adultery between the plaintiff and the defendant's wife had been made, or had come to his knowledge, or had been heard of by him.

Q. Give the words as nearly as you can? A. I cannot give them any nearer than that; that is the substance of what he said.

Re-cross Examination by Mr. CURTIS:

Q. This was 10 years ago? A. This was in the very latter part of 1862; it was either November or December.

Q. Can you name anybody who was present in the Court Room, and heard the remarks that he addressed to you over the Bench? A. No, sir; I cannot tell; there were not over eight or ten people in the room at the time. I remember the circumstance very distinctly; it was in the old building.

Q. The old Chambers? A. The old Chambers.

Q. Do you know whether Mr. Beamish was there? A. I should think it was before Mr. Beamish came into the Court, but I don't know. I can not state that; I have no recollection on that subject.

Q. Can you name any officer who was present? A. I can not.

Q. Or any other person? A. I don't think there were more than three or four lawyers in the room, besides myself. I recollect a person or two being at the table, and one or two persons being in the back part of the room, but, substantially, the conversation was between myself and Judge Barnard alone.

Q. Do you know whether anybody else heard what he said? A. I can only answer that question by saying, that I hoped and thought at the time, that that conversation—if it was to affect any person—was not likely to be made public with the number of persons who were there. I hoped it would not; that is all I can say about it.

Q. Have you any evidence that anybody did hear it, except yourself? A. I have not; I don't know that I have mentioned it, except as I say, for the purpose of bringing out the latter part of that conversation with Judge Barnard, and I did that in answer to some one who had spoken in my presence of Judge Barnard. and I felt bound to testify in regard to the latter part of that conversation.

Q. At that time, and for a long time afterwards, in the year 1862, you never heard of this as floating about? A. No, sir; I did not; I am bound to say, that I never knew that it obtained any publicity.

Q. It never did anybody any harm whatever, did it? A. Never to my knowledge.

Q. Can you give the name of the plaintiff and the defendant? A. I very much prefer not to do it; I hope it will not be necessary. I will furnish it for the information of parties here, but it is in regard to families where I should be very loth to introduce a trouble of that kind.

Q. Was your client present? A. He was not present; no, sir.

Q. Was anybody connected with them present—either of them? A. I think a clerk from the office of the defendant's attorney was present.

Q. Do you know his name? A. I don't remember the name of the clerk.

Q. The reason why you were there was, to get a Receiver appointed? A. Yes, sir; of a judgment debtor's property.

Q. And the judgment creditor was that physician? A. Yes, sir.

Q. Do you recognize this gentleman who is now present as being the officer who stood at the desk at the time when this divorce case was before the Court last summer? A. I do not, sir; I have seen the officer frequently, but I cannot identify him as having seen him on one day rather than another; I cannot state whether he was there on that day or not.

Q. Have you been in Chambers there at any time during the last year without seeing this officer present? A. That I cannot tell; it is one of the things that I have not noticed; I have seen this officer frequently, on a good many occasions, but I could not have told from recollection, meeting him away from the City Hall, in which Court I had seen him—whether it was the Supreme, Common Pleas or Superior.

By Mr. HILL:

Q. This time last summer that you speak of. Let me ask first, generally, who were present, generally, at these Chambers? A. Who was on this occasion, or who was generally?

Q. Generally? A. The bar and the Court attendants, and such persons as come in, having cases of their own, which they took an interest in, and came in to hear argued.

Q. Are there parties, outside of the bar, and Court attendants, to any extent? A. I should think not, to any great extent, except the members of the bar and their clerks and attendants, or their clerks and messengers and suitors, or those who were connected with suits.

Q. But very seldom do suitors come upon an *ex-parte* application, do they? A. It is rare; I should say that it was rare that many were in attendance except the junior partners in law firms and their managing clerks and the messengers whom they employed to go back and forth, and occasionally persons who were interested in their suits.

Q. What kind of an application was this—a final decree for divorce? A. My recollection is that it was an application which concerned alimony in the case, and the custody of the children.

Q. Which was a matter simply to be argued from the papers, was it not? A. So I understood.

Q. Isn't it rather unusual to bring the clients into Court—a woman—on such an application? A. Well; I should say that it was.

Q. Wouldn't you infer that it was because the counsel said that he had brought the woman into Court, that that was what led to the remark, whatever it was? A. It followed directly and instantly; the repartee was instantaneous after the counsel had said that he had brought his client into Court, and she denied the charge.

Q. The denial could not amount to anything there, could it, of course? A. Of course not.

By Mr. CURTIS:

Q. I understood you to say that Judge Barnard was calling the calendar at that time. A. Well, I may have said so; he was proceeding to hear motions in the Court-room; whether he actually called the cases from the calendar, I would not undertake to say, though I presume he did; as I said, up to a certain time, my attention had been withdrawn; I was thinking of something else from what was proceeding in the Court.

Q. I understood you to say in your examination in chief, that he was calling the calendar, and came to this divorce case, and then this

occurrence took place? A. That is my best recollection; I say I was waiting for my own case to be called, which was lower on the calendar; I think it was called, and yet I wouldn't undertake to say that I remember the calling of that cause.

NEHEMIAH MILLARD, a witness, called on behalf of the prosecution, sworn, and examined by Mr. VAN COTT:

Q. Are you a member of the bar? A. Yes, sir.

Q. Were you attorney for the plaintiff in the action of John Nyce against the Erie Railway Co., Robert A. Heath and others, commenced early in the year 1870? A. I was.

Q. Have you produced, in obedience to the subpoena, the complaint, the affidavit, and an *ex parte* injunction order made by Judge Barnard in that cause? A. So far as I have been able.

Q. Will you now produce what you have? A. I have several papers here.

Q. What have you produced in obedience to the subpoena? A. The subpoena is a little indefinite. If you will have the kindness to designate what papers are referred to in that subpoena, I will, as far as I can, comply with your request.

Q. The original complaint and affidavit, and *ex parte* injunction order of Judge Barnard in John Nyce against the Erie Railway Co., dated about March 1st, 1870? A. The original complaint is on file, I believe. When I got the injunction I filed the original complaint, and the affidavit annexed, and the injunction and other papers accompanying it.

Q. Have you any copy of that complaint in your possession? A. I have not; the only copy that I had was used on the motion argued before Judge Cardoza, and it was handed up to him with the other papers, I supposed I had a copy, but on examining my papers I find I have none.

Q. Have you a copy of the *ex parte* injunction order made by Judge Barnard? A. I have, sir; that is a copy, I believe. (Producing a document, which is marked Charge 3, O).

Q. Did you obtain the order from Judge Barnard. A. I did, sir.

Q. On the day it bears date? A. I am not aware now, I shall only have to speak from memory, as I haven't anything in my papers to indicate when it was. My impression is it was on the 1st day of March, 1870.

Q. Do you remember where you obtained it? A. I obtained it in the Chambers of the Supreme Court, in the Court House, in the City of New York.

Q. Do you remember at what hour of the day? A. I should think, about 10 o'clock or a little after.

Q. Who is John Nyce? A. John Nyce is—I don't know that I can answer that question, sir.

Q. Well, I don't know, I have not the pleasure of his acquaintance. Suppose you try.

Mr. PRINCE :

He was the plaintiff, wasn't he, in the case? A. John Nyce was the plaintiff in the case. He was my client.

Mr. Van COTT :

Q. Where did he live? A. I believe at that time he resided in Pennsylvania, although I am not sure.

Q. What was his business? A. I believe his profession is that of a lawyer.

Q. How long had you known him? A. Not a very great while; perhaps three or four days.

Q. Who introduced him to you? A. I do not now remember who it was; I think he came to my office the first time I saw him.

Q. Who came with him? A. No one.

Q. Who did he say sent him? A. He did not say that he had been sent by any one, I believe; I think he mentioned the fact that he was representing certain stockholders in the Erie Railway Co.; and I had a conversation with him for a short time and he introduced the subject-matter of this case.

Q. Who did he say had mentioned your name to him as an attorney to be employed in bringing the action? I am not aware that he mentioned any name.

Q. Who had spoken to you about the bringing of such an action, before he came to your office? A. I don't think that the action had been mentioned to me, or the subject of it, before that time.

Q. Did you know James Fisk, Jr., at that time? A. I did know him, sir.

Q. Did you know Jay Gould at that time? A. Yes, sir.

Q. Did you know Frederick A. Lane at that time? A. Yes, sir.

Q. How recently, before your employment by Mr. Nyce, had you seen either of those gentlemen? A. I don't think I had seen Mr. Gould or Mr. Fisk for some months. I had had business matters with Mr. Lane in some one or two suits which I had against the Erie Railway Co., and I may have had a conversation with him a few days previously, though I do not remember just when it was.

Q. Where did your last interview with Mr. Lane occur before you were employed by Mr. Nyce? A. I am not sure; I think I had a conversation with him at the Erie buildings in Twenty-third street.

Q. And you say three or four days before Nyce appeared? A. It may have been; yes, sir? I am not sure.

Q. Do you remember what he said about Mr. Nyce coming? A. He made no allusion to his coming to my office, I think.

Q. What did he allude to in that connection? A. I do not remember now that there was anything said by him excepting he stated to me that he had understood that there was some suit to be brought, and I think that is about all that was said.

Q. Do you remember who paid your fee in that case? A. Mr. Nyce.

Q. When he came to employ you? A. Yes, sir.

Q. Has that suit ever been tried? A. It has not.

Q. Has it ever been noticed for trial? A. No, sir.

Q. When did you see Mr. Nyce next after he swore to that complaint? A. He was at my office several times during the week; that is immediately after the granting of the injunction we had several interviews together.

Q. And after that when did you first see him? A. I can not now state.

A. Can you state that you ever saw him after that? A. I did several times in the course of the next three months, I think, or within the next four or five months.

Q. Do you remember that a motion was made in April, 1870, to dissolve the injunction? A. I do, sir.

Q. Was he in this city then? A. I believe he was.

Q. Was he here when it was argued in May, before Judge Cardozo? A. I am not sure about that; I sent to him to have him here, and it is my present impression he was here.

Q. Was the motion to dissolve, made before Judge Cardozo, ever decided? A. It was not to my knowledge.

Q. Was another motion made to dissolve, on complaint and answer, before Judge Brady? A. It was; I suppose I shall have an opportunity of explaining these matters by stating something further.

MR. CURTIS :

You will.

Q. Was Mr. Nyce in this city on that occasion? A. I believe he was; my present recollection is that he was present at all of those motions, or about that time.

Q. Was he here when the final order was made on the 3d of August, 1870, by Judge Brady, dissolving the injunction? A. I do not think he was.

Q. Did you take any appeal from that order? No, sir.

Q. Did you have any communication with Nyce in relation to that order? A. Yes, sir; I communicated with him right away after the order was granted, requesting him to give me instructions what further steps to take in the case.

Q. What instruction did he give you? A. I don't remember now of receiving any instruction from him since then.

Q. And was that his final exit, as far as you remember? A. I can not answer that question, sir; I have not conferred with him, I think, since my last communication requesting instruction from him.

Q. And he ceased to instruct you, and you ceased to labor, but waited; is that so, sir? A. You have the facts as I have stated them to you. I believe I have given them just as they are.

Q. Is it a fact that you never, after that order was made dissolving the injunction, did anything in the cause? A. I don't know but I have written to him subsequently. I may have done so.

Q. Is it the fact that after you apprized him that the injunction had been dissolved you never did anything in the cause? A. I never have received any direction from him sir.

Q. You occasionally saw Mr. Lane, didn't you, between the time of obtaining the injunction and the time when it was finally dissolved by Judge Brady? A. I have seen him several times since then.

Q. No; between those dates; is that what you mean? A. Will you repeat the question?

Q. The question was whether you occasionally saw Mr. Lane between the date when you obtained that injunction and the date when Judge Brady dissolved it? A. I may have seen him, though I have no recollection now that I did see him in this matter or had any conversation with him about it.

Q. Were you at the Erie Railroad office between those dates? A. Yes, sir; I think I was, several times.

Q. Who did you see? A. I think I saw Mr. Lane.

Q. Then you think you did see him between those dates? A. I am not sure whether it was before or after August. I recollect of going there after August, or about that time, but it was upon another matter entirely.

Q. You say Mr. Lane spoke to you about the fact that some such suit was to be brought. Do you think he never had the curiosity to ask you what had become of the suit after that? A. That is a very difficult question for me to answer—what he had thought. I give you the fact.

Q. Well, did he ever ask you? A. I don't think he ever conferred with me about that suit, except as I have stated.

Q. Nor Mr. Fisk? A. I never had any conversation with Mr. Fisk upon the subject.

Q. Nor Mr. Gould? A. Nor Mr. Gould.

Q. Nor Mr. Shearman? A. No, sir; I never conferred with Mr. Shearman on the subject of that suit.

Q. Never had any conversation with him about it? A. Never had any conversation with him at all.

Q. No allusion ever made to it by him? A. No, sir.

Q. Who drew that complaint? A. Well, I shall decline to answer that question. That is a matter which pertains to the relation between me and my client.

Q. Did he draw it? A. I shall decline to answer the question. I will answer your question to the extent of stating that the original complaint has my signature attached to it. That complaint was made up from statements and documents and examinations which were made, and after a careful perusal I put my name to the original complaint, and the complaint and affidavit I think were sworn to before a commissioner in my office. That is my remembrance, though I am not positive about that.

Q. Who prepared the complaint and the affidavit on which you obtained Judge Barnard's *ex parte* order for an injunction? A. I prefer not to answer that question for the reasons that I have stated.

Mr. VAN COTT:

I ask the judgment of the Committee; I cannot conceive of a confidence on the question who prepared a paper of that kind, which is a public record.

Mr. HILL:

I think the question is a proper one, and should be answered. I can not see how it affects him in the relation between him and his client now.

Mr. PRINCE:

That appears to be the judgment of the Committee, Mr. Millard? A. I cannot answer your question, because I do not know. I made some inquiries of my client as to the allegations, and as to the facts which those allegations referred to, and I think I was informed by him that he had prepared the complaint so far as it was presented to me, himself. That is all I know on the subject.

Q. Did you make any alteration in the complaint? A. I am not aware that I did, and yet I may have done so.

Q. And in the affidavit? A. No, sir; the affidavit was a very short affidavit.

Q. Have you a copy of the affidavit with you? A. I have not; it was annexed to the only copy of the complaint that I had, and that is in the possession of Judge Cardozo, I believe.

Q. You say it was prepared from documents and papers; where did you get the documents? A. The papers were brought to me by Mr. Nyce.

Q. Were they in his handwriting? A. I am not aware.

Q. Was the complaint in his handwriting? A. I do not know.

Q. Or the affidavit? A. I do not know.

Q. Do you know now what the documents were? A. He had papers with him; they were not left with me; I may have had them for a short time. I cannot now state what they were. There were several documents, some printed matter, and some memoranda which I think were in his handwriting, and they were left with me, and I examined them, and I believe I returned them to him again, so that I retained nothing except the original complaint and affidavit.

Q. Did any of these document come from Mr. Lane? A. I do not know that they did; I don't know anything about it.

Q. Didn't you hear that they did? A. No, sir; I did not.

Q. Do you remember who argued the motion to dissolve the injunction? A. I argued the motion.

Q. Before Judge Cardozo? A. Before Judge Cardozo. Some motion was made before Judge Brady, which I also argued, and another motion was made before Judge Barnard, which I also argued.

Q. Do you remember Judge Fithian being counsel? A. Judge Fithian was counsel in the first motion, and I expected him to be there but the argument was thrown upon me, and I do not now remember whether he assisted in the argument at all or not. I went through the main argument myself.

Q. Do you remember at whose suggestion he was employed? A. I do not, sir.

Q. Did you employ him? A. I think I did. Yes, sir; I think I employed him myself. I conferred with my client, and whether I suggested his name, or he, I am not at present sure. I went to Judge Fithian and consulted with him in the cause, and employed him as counsel to assist me.

Q. Do you know who paid his fees? A. I do not, sir.

Q. Do you know Mr. Aaron J. Vanderpoel? A. Yes, sir.

Q. Did you have any conversation with him about the case? A. No, sir; I think I never exchanged any words with him upon the subject of this case.

Q. You can say positively that you did not? A. It may be that Mr. Vanderpoel was expected to argue the case on behalf of the Erie defendants who were named in this case—that is, the Erie Railway Company, I may have met him in the street and asked him if he was going to be there. I supposed that he being the counsel of the road, would perhaps appear there. I think he informed me that he should not attend.

Q. Did the Erie Railroad Company make any motion to dissolve that injunction? A. I think not.

Q. Did they put in an answer? A. Yes, sir.

Q. Did they controvert the allegations in the complaint? A. I believe they did, though the answer will speak for itself. I am not fully sure, but that is my impression.

Q. Did they make any attempt to bring the case to a hearing? A. I think they did show some activity in the argument of these motions, and I supposed that they were going to be there.

Q. Can you say that any counsel for the Erie Railway Co. appeared on the motions that were made to dissolve the injunction? A. I think not; I think that some of the attorneys were there at the different stages in the argument of that motion.

Q. What was the considerable activity that the Erie Railroad Co. displayed on those motions, if it made no effort to have the order dissolved? A. You fail to take my statement; before the motion was argued, I think I saw the attorneys who had appeared; I think they came around to my office several times.

Q. Who were they? A. Newell, Denman and Prentice, who were the attorneys in the case, who appeared and put in the answer, just at the day of the motion; I do not now remember whether they were there or not.

Q. You don't think they pressed very hard to get a dissolution of the injunction, do you? A. I don't think they were there at all on that day.

Q. Did they ever notice the case for trial? A. I never have received any notice from them.

By Mr. HILL:

Q. Was not that suit really brought at the instance of Fisk and

Gould, as far as you know? A. That is a conclusion of law, and I can not answer the question; I give you the facts as far as I have them.

Q. Did not Mr. Vanderpoel suggest the employment of Fithian? A. I don't think he did; I had a very hurried conversation in the street upon the day of the motion, and I think I had already retained Judge Fithian; I must have retained him; I simply inquired whether he would be there himself on the motion.

Cross-examination by Mr. CURTIS:

Q. How much stock of the Erie Railroad Co. did your client, Mr. Nyce, hold? A. I am not able to state; I believe I asked him and he told me that he owned a large amount, and represented a considerable sum, but I am not able to state.

Q. How much was represented in the suit? A. I can not now state; the complaint will show.

Q. Have you a copy of the complaint with you? A. I have not, sir; the original complaint is on file, and the other I believe—the only copy I had, is with Judge Cardozo; at least, I handed it up to him on the argument of one of these motions.

Q. The object of the suit was to obtain an injunction, was it not, restraining Heath and Raphael, and the Erie Railway Company, from making transfers of that stock? A. Yes, sir; the injunction embraced a recitation of the prayer of the complaint in full, and that I believe fully expresses the object of that suit.

Q. You have produced a copy of that injunction? A. I have, sir; when I sued out the injunction, I embraced the prayer of the complaint in full.

Q. When Mr. Nyce came to you with this case, you made an examination of the facts, and ascertained from him his purpose in bringing the action, did you not? A. I did sir, very fully.

Q. Did you regard it as an honest case, and one in which it was fit to obtain the injunction that you proposed to get? A. That was my view of it at the time, as that was my express object in investigating the affair before I appended my name to the complaint.

Q. Have you ever changed your opinion on that subject? A. Not as a lawyer, I have not, sir; it seemed to me always that if the allegations as set out in that complaint were sustained, that it was as fair an action as ever could have been brought.

Q. Now I wish that you would explain, if you please, whatever you may desire to explain in connection with the questions that have been asked you, the short specific facts that have been drawn out from you, in regard to the history of this case and more especially, if you know, why no decisions have been had upon the merits? A. After the injunction had been granted by Judge Barnard, I supposed that very soon a motion would be made to set aside that injunction. At first I did not anticipate such a motion but within a week or ten days I presumed that there would be a motion of that kind made. Upon what basis I now found that presumption, or did at that time, I cannot state.

In a short time a motion was made to dissolve that injunction before the answer had been put in. I opposed the dissolution of that injunction, among other things upon the ground that it was premature, that the answer had been put in before the motion was made to dissolve the injunction, and I supposed that Judge Cardozo would decline to dissolve the injunction upon that ground if upon no other, although there were other grounds stated; I have not my brief here now to assign them. Sometime after the answer was served and before Judge Cardozo had made any intimation as to the decision in the matter as far as I know, and immediately after the answer was put in, the motion was renewed, and that motion was granted, dissolving the injunction, and I always inferred from that that the decision of Judge Cardozo in the matter was unnecessary. I called upon him, I believe, for a decision while the other motion was pending, but I never got any information from him as to when he would decide the case. I believe, I called upon him on the bench; I do not mean that I called upon him in private for I never had any interview with any of the Judges, I believe, in the city of New York, except upon the bench in any matter that I had before them.

Q. Was there any complicity of any kind between you and Judge Barnard in regard to the obtaining of that injunction in order to effect any purpose known to you, or ever suspected by you, of Fisk and Gould? A. I cannot answer your question in that way because that is a conclusion. I can only give you the facts; that I never had any conversation with Judge Barnard or Judge Cardozo, or any other Judge in this city except upon the bench, and so far as any complicity was concerned I never had it. I knew of no reason so far as I was concerned, professionally, for having anything of that kind and I never attempted anything of that sort.

Q. Did you suppose or imagine that in prosecuting that case you were effecting any purpose of Fisk and Gould in regard to the seizure or detention of stock belonging to Heath and Raphael? A. I may have supposed that they had some object of their own to serve but I supposed concurrent with that I had my own object to serve, and that was to benefit the stockholders who chose to come in and carry on this suit, though if I had any supposition of that kind it was a very vague one for I had nothing to found it upon so far as I was concerned personally, and I do not know as I would be willing to swear now that I had any supposition even upon the subject, for I supposed that the case was a fair one and proceeded accordingly in my professional relation. I have done nothing outside of it.

Q. And you know nothing which led you to suppose that any body else who had been pursuing a similar object in regard to stock of the Erie Railway Company had any other less honest purpose than you and your client? A. I had no counsel or consultation with any other persons outside of my client in reference to that suit and I was always assured by him that he could sustain the facts as he alleged them, and that was sufficient for me to go on with the suit.

Redirect examination by Mr. VAN COTT.

Q. Do you remember how long you were at Chambers when you obtained Judge Barnard's order for the injunction? A. No. I am not able to state. I handed the papers up to the Judge and he examined them; I cannot state how long.

Q. Give me the best of your judgment as to the length of time? A. I should suppose that I was in the court room from ten to twenty minutes. I stated to the Judge, while he was examining the papers, very briefly the objects of the suit, and while he was looking them over.

Q. Do you remember the principal ground of the action stated in the complaint? A. I am not now able to state, because the subpoena which was given me on Saturday left me without any opportunity then to examine the matter, and I have not been able since then to examine any further than to look at the injunction.

Q. I think that you expressed the opinion in your cross-examination that the suit was a proper suit with reference to the relief asked? A. So far as my judgment went, I so considered it.

Q. Now I understand you to say that that complaint was brought there fully prepared, and that therefore you did not devise the complaint or the particular remedy? A. You have my statement as I have already made it. I examined the complaint very carefully and went over with my client the grounds of his relief, and how he would be able to sustain the several allegations in the complaint.

Q. Do you not remember that the chief ground stated in that complaint was the alleged unconstitutionality of the Erie Classification Act? A. That was one, sir.

Q. Do you not remember that the complaint stated the classification of the Erie directors under that act, the names of the directors falling within each class, and the periods of the successive elections to replace those whose term would expire? A. Yes, sir; since you mention it I remember it.

Q. You obtained this injunction in March, 1870. Do you not remember that the complaint stated that the next election would be in the month of October? A. I think so. I am not positive.

Q. Do you not remember that the special ground of the complaint was that that act being unconstitutional, the plaintiff was apprehensive that elections would take place in the successive October, under that act? A. It was substantially recited in the complaint.

Q. And do you not know that the injunction was asked for to prevent a transfer of stock upon an apprehension that the transferees of stock would attend at the October election and vote for directors under that alleged unconstitutional classification act? A. I now cannot state from my memory whether that was so or not.

Q. When the motion was made for the dissolution of the injunction, was it not pressed as a ground of the motion that the action was collusive in the interest of the Erie Railway Company and of Fisk and Gould? A. It was urged by Mr. Evarts, and I opposed that very strenuously, or at least tried to for the reasons which I have already stated in this examination.

Q. Do you not remember that Judge Brady dissolved the injunction on two grounds, first, that it was evidently a collusive suit, and secondly, that the complaint stated no equities for the relief by injunction?

A. I may have seen, I probably have, the reasons assigned by Judge Brady for setting aside that injunction, but I do not now remember the grounds which he stated. I am not aware, however, that that is one of the reasons that it was evidently a collusive suit.

Q. Well, as to the other reason? A. I cannot state as to that.

By Mr. HILL:

Q. Why was it claimed that the act was unconstitutional—on what ground? A. By the defendants do you mean?

Q. By the plaintiff? A. I don't think that the reasons were set out in the complaint.

Q. Just simply alleged it to be unconstitutional? A. The allegation was made in the complaint that it was unconstitutional. It was a matter of argument for us to show why it was unconstitutional.

Q. You don't recollect the grounds? A. No sir, I do not now.

Q. In addition to the complaint was there an affidavit upon which the injunction was obtained? A. Certainly.

Q. The complaint itself was not used as an affidavit? A. The complaint had an affidavit accompanying it and the injunction was granted upon those papers. The original complaint and affidavit I think are on file in the County Clerk's office.

HORACE F. CLARK, a witness called on behalf of the prosecution, sworn and examined by Mr. VAN COTT:

Q. Will you please state what large corporations you are and have been connected with within the last ten years? A. I am connected in one way and another with a great many corporations extending from the Atlantic coast well towards the Pacific coast. I will enumerate them if you wish.

Q. If you please? A. I am connected, beginning at the East with the New York and New Haven as a Director; Director of the New York and Harlem; Director in the Hudson River; Director in the New York Central; and now President of the Lake Shore and Michigan Southern Railway, extending from Buffalo as far West as Chicago with branches North and South; and I am President of the Union Pacific Railroad.

Q. Where is the principal business office of the Union Pacific? A. City of Boston.

Q. Was it originally there? A. No, sir; it was, I think, originally in New York.

Q. Will you state the motive for removing it to Boston, and the circumstances under which it was so removed? A. I was not connected with the Union Pacific Road at the time of the removal of the office from New York to Boston. It was done under an act of Congress passed, I think, in 1869. I became President of the Union Pacific

Railroad at the election held in the city of Boston on the 6th of March, this year. I only know as part of the public history of the times and from the traditions of the Company as to the circumstances of the removal, and I know what has recently transpired.

Q. Will you state from that general tradition of the Company and the history of the times what the reasons were? A. I think Mr. Tilden must know. Am I right about the year; was it 1869?

Mr. TILDEN :

I think it was, sir.

A. A suit was commenced in 1868; a suit was instituted and I think is still pending; as President of the Company I am so informed, that the suit is still pending in the name either of James Fisk, Jr., or Otis Pollard. I have never looked at the papers; it has never become my duty to do so. The plaintiff claimed to be the holder of six shares of the stock of the Union Pacific-Railway Company.

Q. Please state in that connection the number of shares in the Company. A. The capital stock issued is 36,000 shares of \$100 each. The value in the market has varied from 30 to 46 of late; 37 I believe to-day. The tradition of the claim made by the Company was that the suit was substantially fictitious; what the fact may be about it I do not know, but there are those of course who know. Such proceedings were had in that suit that a Receivership of a certain class of securities which were in the office at New York and in an iron safe, was made; by whom I do not know. Not being then connected with the Company, and having multifarious employments, I did not follow it up closely.

Q. Can you remember who the Receiver was that you mentioned in that connection? A. I did not know who the Receiver was until it was announced at the meeting of the stockholders in the city of Boston on the 6th of March. It was a son of Mr. William M. Tweed, but which son I do not know. There were allegations as to the amount of the security; I made no inquiries as to that and have no personal knowledge on the subject; under that Receivership—whether with or without the authority of a Court I do not know, and I have not been informed directly upon that point; the Receiver saw fit to attempt to make an entry to get into the safes of the Company by jimmies, chisels and tools, and the tradition in the Company is that there were twelve millions in the safe. The tradition of the Company is that during this Receivership they were subjected to gross abuses and to large payments, what are familiarly called strikes. Pending the Receivership and before action was taken to avert the consequences, the sum of \$50,000 was paid from the treasury at one time to buy peace. I do not believe that the money went to the Judges, or any of it. The statement was made at the city of Boston at the meeting of the stockholders on the 6th of March, that \$50,000 was paid at one time to buy temporary exemption from molestation, and I not believing that that money was participated in by the Judges, I asked the question who paid it and to whom it was paid, and I

called upon the Treasurer in the presence of the Board to state when the money was paid, to whom it was paid, and under what pretence it was claimed. The information that I received was that the money was paid by John J. Cisco, who at that time was Treasurer of the Union Pacific Railroad Company. I asked the question to whom it was paid and I was answered, I will give you the person if you wish.

Q. We want it? A. It was paid to Mr. Wm. Fullerton; it was so stated. Statements were made in relation to the division of that money which I disbelieved myself.

Mr. ANDREWS:

Let us have them in this connection. A. I will tell you; I did not believe that Judge Barnard received any portion of that money nor was I satisfied that he had any knowledge of the fact that the payment of that \$50,000 was exacted. I stated so to the Board of Directors of the Union Pacific Road, and as President of the road instructed the Treasurer to hunt up the check, hunt up the voucher, and furnish all the evidence, if there was inquiry in relation to the matter, that might be had. The check will probably be forwarded from Boston to anybody who desires to know, for there are no secrets about the matter.

Q. We desire to have it? A. The parties making that payment or assenting to that payment are the following, as they themselves stated in the Union Pacific Board: John Duff, of Boston, then Vice-President and now Vice-President of the Union Pacific Railroad Company; Mr. Cisco, the Treasurer: Hon. Oakes Ames, of Massachusetts, now a Member of Congress, and one of the large owners of the Union Pacific Railroad Company: Mr. Bushnell, of Connecticut; C. S. Bushnell, still a Director of the Union Pacific Railroad Company, and to-day in this city, and one or more of the Government Directors. In the Company there are five Government Directors. Out of the twenty Directors the Charter, which is a Congressional Charter, gives to the President of the United States the appointment of five. One or more of the Government Directors knew of the payment of that money. There were further obstructions. They had occasion to have access to their safe, and they were charged —. I think the statement by one of these gentlemen was that they were charged \$15 upon every occasion that the safe was opened as a reward for the labor of opening the safe.

By Mr. TILDEN:

Q. In whose custody was the safe? A. The safe was in Nassau street. I think in the offices of the Union Pacific, and I think that the Receiver placed guards about it.

Q. Wm. M. Tweed, Jun.? A. I would not be certain that that is the name. It was a son of Wm. M. Tweed.

By Mr. VAN COLT:

Q. Access was permitted? A. Access was permitted upon the payment. I asked what was paid, and upon one occasion one gentleman

stated that \$15 was paid for the service of opening the safe to permit access to the papers, not one of the securities which were the subject of controversy. The Directors of the Union Pacific Road, or the Executive Committee of the road, I don't know which, felt it their duty to remove those securities, and did so in spite of the injunction. They disregarded the injunction and carried away to Boston perhaps ten or twelve millions of these securities. Some were lost in the hurly-burly. Congress was in session. Ah! stop a moment. About this time the Receiver claimed the right to drill and get into the safe. He claimed the right, as he said, under an order, by whom issued I do not know; I have not inquired. The Company claimed that that entry was burglarious, and with a view to steal. They thought so, and they felt constrained to prevent serious mischief to the Company by taking away the securities. They took them—took them to Boston. Congress was in session, suspended the rules, and in one day passed a law directing a removal of the offices of the Company to the city of Boston, and fixing the time for the annual election on the Wednesday following the first Tuesday of March in each year, and authorized the stockholders by a vote to determine where their next annual election should be held, or where their principal place of business should be. There was a meeting of stockholders held in Boston on the 6th of March, 1872. The New York element came into the Board of Direction. The subject became one of discussion, because it was supposed by the Eastern stockholders that the New York element in the Board would desire for their own personal convenience that the principal place of business, including the treasury of the company, should be removed to the city of New York. It was in the discussion touching that subject, and the action of the Board upon it, the action of the newly elected Board upon this question of the removal to the city of New York that gave me all the information which I have upon that question. The stockholders, the large stockholders, refused to consent to a removal of the offices to New York; and while the voting was going on several of them stated that they would not vote for the New York element as it is called, for the New York men, unless with the understanding that there should be no removal in the present condition of things.

Q. What do you mean by the present condition of things? A. Well, I think that suit is pending.

By Mr. TILDEN:

Q. That suit is now in the Federal Court? A. The United States passed a law in the same connection, authorizing the removal of suits in that company to the Federal Court.

Q. That law was earlier. A. I thought it grew out of that affair.

Q. No? A. The complaint made there was that that law was disregarded. The counsel in Boston—I forget his name, said that that law had been treated as a nullity in the State Courts of New York, but I don't know how that is. I think it was stated that you (Mr. Tilden), and Judge Emmott were counsel in the matter in some shape.

By Mr. HILL:

Q. Counsel for whom? A. Counsel for the Union Pacific Co.

By Mr. TILDEN:

Q. I came into the Union Pacific as counsel in 1869. A. I never heard of the circumstance before that there had been in the State of New York any disregard of the act of Congress authorizing the removal of these suits. The Union Pacific Railroad Company is a corporation created by act of Congress, and at the time of its creation was wholly in the territories of the United States. I doubt whether Nebraska was admitted as a State at the time that that law was passed.

Q. No, not until afterwards? A. The road then extends 1,100 miles in the territories of the United States.

By Mr. VAN COTT:

Will you resume the narrative you were proceeding with? A. The suit was still pending, having slumbered, I suppose, from the time of the removal of the offices. An application had been made on the part of Mrs. Fisk to settle the suit—cry quits. The company made large claims for damages arising. They alleged that they lost millions. They alleged that the practical effect of the proceedings was to diminish the market value of their bonds, from 102 to 70, and they counted up the loss by millions, and they were advised by counsel that parties in New York were responsible for the consequences of acts which they say were groundless. I don't know the merits. It was stated that Mr. Fisk had made application to one of the Boston owners to abandon the proceedings, and cry quits; and that one of the counsel had demanded the payment to him of \$25,000, as a condition for the adjustment.

Q. Counsel for the plaintiff or defendant? A. Counsel for the plaintiff had demanded for himself—not on the merits—but had demanded for himself, the payment of \$25,000.

Q. Will you name him? A. Yes, I will; but I must say I don't know it is true. I must give you the name of my informant. Mr. John Duff stated (it may have been the Hon. Oakes Ames stated) to the board that Mr. David Dudley Field had demanded \$25,000 as a consideration which must be paid to him to induce an adjustment between the parties. That adjustment would have rendered it reasonably safe, it was supposed, to move the offices to New York. The Board refused to listen to the proposition, and the Executive Committee had previously refused it, and the discussion upon the subject resulted in the passage of a resolution by the Board which is this communicated to me by the Secretary of the Board.

" Union Pacific R. R. Co.

" Sears Building.

" Boston, March 8, 1872.

" Mr. HORACE CLARK, President, New York:

" DEAR SIR:

" Enclosed please find copy of two resolutions passed at the meeting

“of the Board of Directors by this Committee, March 6, 1872. A copy
 “has been forwarded to the Speaker of the Assembly of the State of
 “New York at Albany, with the signature of the Secretary, and the
 “seal of the company attached.

“Yours truly,

“E. H. ROLLINS,
 “*Treasurer.*”

—
 “*Union Pacific R.R. Co,*
 “*Sears Building.*

“Boston, March 6, 1872.

“At a meeting of the Board of Directors of this company, held this
 “day at the office of the company, in the city of Boston, in the State of
 “Massachusetts.

“Present—Honorable Horace F. Clark, President, John Duff, Vice-
 “President; Honorable Augustus Schell, New York; Honorable Oakes
 “Ames, Boston; Elisha Atkins, Boston; James H. Banker, New York;
 “Ezra H. Baker, Boston; Levi P. Morton, New York; Sidney Dillon,
 “New York; C. S. Bushnell, Connecticut; George M. Pullman,
 “Chicago; F. Gordon Dexter, Boston; N. A. Baldwin, Connecticut,
 “G. M. Dodge, Iowa.

“Government Directors :

“Hon. B. F. Wade, Ohio; Hon. Hiram Price, Iowa; Hon. James
 “C. Wilson, Iowa; J. C. S. Harrison, Indiana; David L. Ruddock,
 “Connecticut.” Those were the gentlemen present.

“On motion of John Duff, the following resolutions were adopted :

“*Resolved*, That a committee, consisting of Hon. Horace F. Clark,
 “President; Hon. Oakes Ames, Director, and Hon. B. F. Wade, Gov-
 “ernment Director, of this city, be and they are hereby appointed to
 “make such representations as they may be advised, and the facts of
 “the case would justify, to the Legislature of the State of New York,
 “in respect to certain judicial proceedings instituted against this com-
 “pany in the name of James Fisk, jr., and in the name of one Pollard,
 “in the Supreme Court of the State of New York for the First Judi-
 “cial District, and which proceedings, and the extraordinary conduct
 “thereof, compelled this company to change its principal office and
 “place of business from the city of New York to the city of Boston.

“*Resolved*, That the Legislature of the State of New York be, and
 “they are hereby respectfully requested to take such action in re-
 “lation to the subject matter as they shall deem appropriate, and
 “that the Secretary of this company transmit to the Speaker of the
 “Assembly of the State of New York, under the seal of the com-
 “pany, a true copy.

“E. H. ROLLINS, *Secretary.*”

The President was further instructed by the Board to furnish every
 facility, so far as its books and papers went, for an examination into

the whole subject matter, to the end that such legislation might be adopted as would prevent a recurrence of evils of this description. I think I named the gentlemen who claim that they have personal knowledge of these facts, Mr. Duff, Mr. Ames and Mr. Sidney Dillon, of New York—I think he lives at this house—and James Wilson, of Iowa. He was a Government Director of the Union Pacific Railroad at that time, and is now, and he was cognizant of those proceedings. I don't know that he assented to the payment of that money.

By the CHAIRMAN:

Q. The \$50,000 you mean? A. Yes, sir; I don't know that the Directors assented to the payment of that item of \$50,000. No action was taken by the stockholders, and none was initiated by the Board upon the question of the removal of the books and papers and offices to the city of New York. The accounting officer, the auditing officer, and the treasurer's office and the president's office are in Boston. The duties are discharged by the Vice-President, who resides in Boston. The Union Pacific and the Central Pacific have an office in the city of New York, but that is in connection with the freight department.

By Mr. TILDEN:

Q. Would the company prefer to have its offices in the city of New York if there were no obstacles? A. Unquestionably.

By Mr. VAN COTT:

Q. Having reference to your great experience in connection with railroads, will you say whether the interests of the Union Pacific railroad would be essentially promoted by locating its offices in New York instead of Boston, aside from any danger from the administration of justice in this city? A. Rather from the mode in which justice is administered.

Q. Aside from the mode in which justice is administered in this city? A. I think that the stockholders, certainly one-half, and perhaps the majority of the stockholders of the Union Pacific railroad are Boston men. They had consented to the establishment of their offices in New York. This is the financial centre of the country. Here the bonded debt was negotiated, and there is a very large amount of stock here, and here is the market for the stock. This is the great market. They have a sort of a stock market in Boston, but it is limited, and they are not as intense speculators in Massachusetts as they are in New York. They have a transfer office in Boston; there is a transfer office here also. The stock market is here. The stock market of the United States is in New York. The treasury ought to be in New York. It may be that some of my Boston friends would like it in a safer place than New York, but if these gentlemen would have consented, we would have removed the offices here. I don't know but what the business of the Pacific railroads, which extend from the Missouri River to California, might be done there. The telegraph reaches Boston as quick as it reaches New York. The mail reaches there within

a day of the time it reaches New York. You are as good judges, gentlemen, as I am, of the necessities of the case. The President of the road now resides in New York. He would be at the office oftener if the office was in New York instead of Boston. It would dispense with some officials. Here might be the President, too. The executive duties of the company are discharged by a Vice-President residing in Boston.

Q. Would it not be for the commercial and financial interests of New York to locate the business offices of the road here, rather than in Boston? A. I think there can be no question upon that subject?

Q. That it would? A. No question about it—New York is as much the financial centre of this country, as London is of England.

Q. You spoke of the suspension of the rules of Congress, and the passage of the act authorizing the removal of this Company's offices from New York to Boston in one day, was not that an unusual thing? A. very unusual thing—I was a Member of Congress for four years, and I never knew it done except in one instance, and that related to some judicial proceeding in California, in connection with land grants, and a bill passed one House in one day. I was not a Member of Congress at the time this bill was passed—Mr. Ames was then in Congress, and Mr. Wade, who was in the Senate at that time. One of this committee stated that it was passed through both Houses on the same day—I think he said through the Senate and House, and became a law.

Q. Did he state under the pressure of what motives and reasons? A. I believe it was distinctly stated.

Q. What were they? A. The condition of this litigation, and the general state of things, but I think Mr. Wade, who was in the Senate, and probably moved the matter there, and the gentlemen who were in the House are here and can state it better. I recollect the passage of this law as part of the history of the times, and I think a law was also passed touching the removal, but I think you say I am mistaken.

Mr. TILDEN :

That was in 1868, I think.

Q. You used the expression: "Owing to the litigation here." What is the import of that. A. What I meant was this. There may have been a good cause of action. I have never looked at the merits; I know nothing of the history of the case, but that a suit, substantially fictitious as is alleged, upon six shares of stock, could be so conducted by our machinery is to subject—

By Mr. VAN COTT :

Q. You mean judicial machinery? A. Yes, sir; by our judicial machinery, the machinery of our Courts, receiverships or injunctions, or whatever it was, as to endanger such great interests and lead to such tremendous results. Gentlemen will furnish you a statement of the actual cost of that enterprise.

Q. Of the removal? A. Of those proceedings—not the removal, but the proceedings.

By Mr. TILDEN :

Q. You have the papers before you, and, if you refer to them, they will show that although this suit was instituted on six shares of stock, it was also for a judgment of a right to subscribe for the further amount of 20,000 shares? A. That was not stated in Boston, but the fact was developed here, because the stock books were referred to, that the same six shares of stock still stood in the name of the party in whose name the suit was originated, and I don't know who the attorneys in the suit are, but it was stated the suit is still pending in the Federal Court. It was stated there that, notwithstanding the Act of Congress authorizing the removal under the judiciary act of 1798, the proceeding went on, but finally Judge Nelson interferes. I have never looked at one single paper connected with the suit. The counsel of the Company, I don't know who they are. Mr. Emmot is the leading, active man, I think. I think Mr. Tracy was in it. He told me, outside, he was in it.

By Mr. VAN COTT :

You are President of the Lake Shore and Michigan Southern R. R. Co? A. Yes, sir.

Q. Has that Company a business office in New York? A. They maintain a freight office in New York. They maintain also, in conjunction with some of their connections, a passenger ticket office. They maintain, in connection with what are called the colored lines, which are the great freight lines extending all over the country, and in conjunction with some of the express companies, what are called fast freight lines and the express and dispatch companies, no official organizations. They maintain no other office. I am President of the Company. I suppose that my office may be called the President's office, but the office of the President of that Company is in Cleveland, Ohio.

Q. Was it in contemplation to have the offices of the Company in New York city? A. The case is this: The Lake Shore and Michigan Southern R. R. Co. traverse the States of New York, Pennsylvania, Ohio, Indiana, Michigan, and Illinois, terminating at Chicago. The charter after the consolidation, or the by-laws authorized the Board of Directors to fix the principal office. The discussions which arose, and the conflict of interest which was on this question, were between New York and Ohio and Chicago. Buffalo was the point, in the State of New York, where the business would be mostly done, and there was a strong desire to establish an office in Buffalo. The stock is owned in New York. It was here prior to 1869, prior to 1870; it had a principal office in New York, which was the Treasurer's office.

By Mr. TILDEN :

Q. That is, the Lake Shore and Michigan Southern had? A. Yes,

sir. The Lake Shore and Michigan Southern, that was the title before the consolidation with the New York road. That is when it only embraced portions of the road, and the roads West. The Buffalo and Erie road, extending from Buffalo to the State line, came into operation in 1869 or 1870; and the question arose then, and an arrangement was made by which the Treasurer's office was in New York. The late Le Grand Lockwood was Treasurer, I think.

By Mr. VAN COTT:

Q. That was of a former Company? A. He was Treasurer of the Lake Shore and Michigan Southern R. R. Co. The title was the Lake Shore and Michigan Southern. The title was not changed at the last consolidation. The New York offices were abolished. The transfer offices of the stock were taken to Trust Companies. The registry of the stock was taken to a Trust Company. The principal offices were established, by a vote, at Cleveland, in the State of Ohio, and the practical working of the road is by a General Manager, resident at Cleveland, and an Assistant Treasurer at Cleveland.

Q. Will you state the motive of those changes from New York to Ohio? A. Well, you can hardly say there was a change, because there were great roads in each of those States prior to the consolidation. But the question was upon the establishment of some general principal office to which accounts and returns should be made, and where the principal executive officer should reside. It was upon the question of the establishment of the new title under the consolidation. The Lake Shore and Michigan Southern R. R. Co. is a consolidation of a great many roads. There was the Buffalo and Erie road; the Erie and Northeast, the Ashtabula road, the Dayton and Michigan, and several other roads.

Q. What determined against the location of those offices in New York? A. The leading men connected with the administration of the Company came to the conclusion that their books and papers, and perhaps their funds, would be equally accessible to parties entitled to access to them, and equally safe, if beyond the jurisdiction of New York. That is the truth of it.

Q. Do you mean the jurisdiction of the Legislature? A. No, sir; the jurisdiction of the Courts. They are not beyond the jurisdiction of the Legislature, because 100 miles of their main road is in the State of New York, while they have invested large amounts of money in the branch roads in the jurisdiction of the State of New York. We yielded perhaps to a distrust, perhaps an excitement, which had grown out of proceedings exceptional in their character which I will not attempt to assail or defend, because I know nothing about it—we thought it best.

Q. Does what you say include the Treasurer's office as well as the others? A. The Treasurer resides in New York. The business of the Treasurer is transacted by an Assistant Treasurer, who resides in Cleveland, Ohio. I think under Mr. Keeps' administration the treasury was actually in New York.

By Mr. TILDEN:

Q. The old Michigan Southern always had its treasury here. That was so before the consolidation with the Cleveland road? A. The Lake Shore and Michigan Southern R. R. Co. is a large corporation, doing an extensive business. There have been materials for litigation, and there is even some still, pending. I think my friend Mr. Curtis, is engaged in some controversy now for that company. I don't know what is the condition of it. It is still pending, is it not, Mr. Curtis?

Mr. CURTIS:

There are controversies pending, but not so many as I wish there were.

WITNESS:

There is another thing which ought to be stated, because it may not be altogether the fault of the judicial system—wholly, I mean New York is the stock market. These great corporations, of course, have stocks, and the stocks are subjects of transactions in New York by dealers residing throughout the whole United States. The transactions, in respect of their stocks, are in the city of New York. The suits which are perilous to great corporations, are not suits brought to be prosecuted. They are suits brought in order that the judicial proceedings taken may affect the stock market for the time being. For instance, there have been many controversies in Court in respect to the great corporations which I am connected. The suits which were the most mischievous, which resulted in the greatest loss, were really unsubstantial, fictitious suits. For instance, a man would claim to invoke the jurisdiction of the Court to try some great question. When he was simply short of ten thousand shares of stock, say he would buy 50 and put them in the name of a New York man, so that he became the owner of so many shares, and then institute a proceeding when an injunction might follow, without security, because our law really requires none. It is a defect in our system, that on \$500 or \$1,000 bonds you can get an injunction which would affect the stock market perhaps millions of dollars. I can give you several illustrations where upon a bond almost worthless, you would find very great results. My impression is that those stock operations connected with great corporations, have led to much of the judicial interference which has accomplished results which must be recognized by the men connected with those great enterprises. I don't know about the Union Pacific R. R. Co., for I was not connected with it, but I venture to say, in regard to the Lake Shore and Michigan Southern R. R. Co. since I was connected with it, and the New York Central R. R. Co., since I was connected with it in 1865, there never has been the slightest disposition to evade an honest jurisdiction in the courts in relation to any of their transactions.

By Mr. VAN COTT:

Q. You spoke of faults of the judicial system. Did you mean of

the system or of the administration of justice? A. Since the Code I don't know where to draw the line of discrimination, but it is not many years since you and I—I did not, because I foresaw the ruin, but the great public were clamoring against the Court of Chancery, because of its powers to interfere by injunctions and receivership with the business of men and commerce. Law and equity, were afterwards combined, and supposed to improve the practice. A power wielded most beneficially, and most wisely, more so apparently than it was ever administered before or since, was struck down because of possible abuses which might occur, and we all know what transpired since the blending of law and equity, the demoralization of the Bar, the degradation of the Bar, and the abolishment of the learning of the past by the substitution of a new system, which has built up, I think, a race of unlearned lawyers, and an elective judiciary, and the facility with which men go into the practice of law, all blended to obtain it. In one case I know of three single acts of the Legislature to be passed in the course of one trial. They came in as amendments to the Code, stole in by sharp lawyers for the purpose of meeting some particular contingency. Perhaps the character of the Legislature was involved, the want of care with which they passed upon those matters. I don't know where the fault lies, but as I told you, I have seen three statutes pass in the course of one trial, which took nearly a year in the Supreme Court in this district, establishing new rules of evidence and changing the law in respect to receiverships of foreign corporations. For instance, a suit was brought for a receivership for a foreign corporation. A law was passed authorizing it *nunc pro tunc*. I say, when you look at all these matters, I don't know whether the fault of the degradation into which we have fallen, for degradation it is, is wholly due to the Legislature, to the Judges, to the Code, or to the Lawyers. I think they have all been careless. I know the Legislature has. I am afraid the Judges have; and I know the Lawyers have.

Q. Are the particular evils you have referred to connected with the granting of injunctions and receiverships affecting great interests of great corporations? A. Most unquestionably.

Q. *Ex parte*? A. Of course. In Boston there are a good many lawyers in that board who are able men. Mr. Wilson, of Iowa, is one of the ablest men, and Mr. Wade is a good lawyer, and the lawyers in Boston are good men, and they asked me what the remedy was. Many thought the remedy was in abolishing the elective judiciary, and some in getting rid of judges upon whom, perhaps, opprobrium had fallen. They stated that they wanted further elements and regulations of law by which it would become impossible that in trifling cases those great interests would be interfered with. If it be possible to get possession of ten millions of securities on a bond of \$500 by an insolvent, that state of things ought not to exist. It would be better to take away the injunction power. If the administration of justice cannot be in the hands of a different set of men, the greatest blessing that could befall the people would be to deprive the Courts of the power of injunctions and receiverships, except in the case of insolvency.

Q. You are aware it is in the discretion of the Judge granting an *ex parte* injunction to require any amount of security under the Code; that his power in that respect is not limited? A. I stated I had never practiced under the Code, and I don't mean to. It is a matter of discretion; it is a matter of discretion to decline the injunction.

Q. It is a matter of discretion to require any amount of security which may be adequate to protect the whole interest involved? A. Yes, sir; but it is *ex parte* on one side of the presentation, and the Judge holding his term in a little room where it looks more like a sodawater shop than a court where justice is administered, he cannot very well get at the merits of the controversy.

Q. He could get at the merits if he waited to hear the other side? A. Yes, sir.

Q. If he didn't grant *ex parte*? A. Yes, sir; but you know very well that under our system, injunctions and receiverships are executions before judgment.

Q. Taking the state of things which you have described as existing here in connection with the administration of justice, what effect does that have upon the business and financial interests of New York, in relation to the internal transactions of the country, and in relation to foreign transactions? A. The business of this country is so vast, and its commerce grows so fast, that those interests have existed in spite of the obstructions. But they are false in this wise; our securities are in some measure distrusted. A certain class of capital that would otherwise seek investment in a certain class of securities here, becomes timid because of the system by which justice is administered, and I think it may be stated, as a safe and a true rule, that just in that proportion in which the great public have confidence in the judiciary of a State, is the degree of confidence of those who invest in the securities subject to its jurisdiction. Now, in England, there is entire confidence. I think it could be proven, if it were a proper subject of inquiry, that the general distrust which results from the character of the whole system has depreciated American railway securities in Europe five per cent.

Q. Do you mean that is the average depreciation of all our railroad securities? A. I should think so. I have known cases where companies with which I am connected. I have had, for instance to place a loan at a rate greatly less than it would be placed if there was that confidence which a different state of things would inspire. There may be something beyond all this. It may be that our universal suffrage elective system may affect it, but here we are struggling on.

Q. The aggregate of that five per cent. depreciation would be enormous, would it not? A. It would be enormous. I think the amount of securities of the corporations with which I am connected, is so large, I should have to figure, and want your aid to get it right.

Q. Can you state what is the general feeling in business circles here, as to the security or insecurity of great corporate and financial interests, in relation to the manner in which justice is administered in this city? A. Do you restrict it to the opinion entertained in New York?

Q. The opinion everywhere in connection with New York. don't think that the people at large discriminate. For instance, here is one Judge, whom it is supposed, might act from a mercenary motive. Here is another that would not—that I know would not. Every man has his own opinion on such a question. I don't think the great public discriminate. I think they put it all in a heap. I think that making no discrimination, taking particular cases without close investigation, and forming a judgment from them, I feel bound to say, that the general conviction is one of distrust and lack of confidence. I state that as the general conviction which has been made upon my mind from the opinions which you hear from all quarters, ramifying from a pretty general range of country. Of course, I restrict it to the Northern States, and to this parallel of latitude.

Q. You say that the general public don't discriminate the particular cases, but lump the general distrust? A. I don't think they do.

Q. But what particular cases and what particular Judges have you in your mind in connection with this general feeling of distrust? A. Well, I don't like to state names, because, I don't know myself of any act on the part of any Judge in New York, which I know to be corrupt, and I do believe, that some of the Judges against whom imputations have been made of corruption are not corrupt.

By Mr. ANDREWS :

Q. Name one, if you please? A. If you want me to open my mouth right straight out, I will.

Q. Do so? A. I have heard very severe reflections upon Judge Cardozo; I have heard very severe reflections upon Judge Barnard, and I have heard reflections upon some other Judges that it has pained me to hear; because, I thought that they were groundless, and I have said so very frequently. I have said in Boston—and I should feel bound to say anywhere—that I don't believe Judge Barnard ever received one dollar or ever acted from mercenary motives. I have known him to be in cases where he was subject to temptations. My impression is, that he has been at times careless and inconsiderate, and that he may have gone a great way perhaps to serve friends, perhaps to serve political friends, and that he yielded—as better men may have done, as stronger men may have done—to political influences, such as those which have depreciated the conditions of things in New York—but I, having practiced before him, and in pretty important cases, have come to the conclusion that there was no element of pecuniary corruption in his character. I don't like to name other Judges, but they are not the only Judges on whom public odium has fallen. When I speak of that, I speak of that distrust and that odium which you will feel in the air in Boston, which you will feel in Ohio, which you will feel in Chicago, in Indiana, in New Haven and in Connecticut, in relation to New York city, and it has extended a little into New York country. There have been some Judges in the State of New York upon whom suspicion has fallen. It has grown out of cases connected with great corporations, but the fact is here. I desire to say, in respect to Judge Barnard, that in the particular cases where I have

been concerned as counsel (and, I think they were perhaps as important as any, involving as large figures), I have watched him closely, and I have never thought that Judge Barnard yielded to a mercenary motive.

By Mr. CURTIS :

Q. Is there any fact personally known to you, or by any tradition, in connection with that suit of Fisk *vs.* the Pacific Railroad Company, that would lead you to think that any personal responsibility for the injurious consequences following to the company ought to be visited upon Judge Barnard? A. Let me say that I was not connected with the company, and I was not certain until I asked Judge Barnard outside to-day, who was the judge by whom these orders were granted, and before whom those proceedings were had, and all I have to say is, if Judge Barnard made an order so as to compel a Receiver to go with a *posse* to break into a safe, surrendering his jurisdiction to enforce in other modes respect for the Court, I think he made a very great mistake if he did that. I don't know that that was done. I should point that out as a surrender of dignity. I don't know that Judge Barnard ever made such an order; I don't know that he appointed the Receiver; I don't know why, particularly, the Receiver was appointed. I will state one other fact. It is said that a gentleman came into a banker's office about two o'clock in the day.

Q. Said here, or somewhere else? A. It is said by hundreds; it is said by the world at large, that a gentleman came into a banker's office about two o'clock in the day, the banker having his tin box on the table just before he was going to put it in the safe, and demanded access to it for the purpose of getting \$400,000 or \$500,000 of securities. He knew of the existence of no suit at the time. An order for the appointment of a Receiver was produced, and this gentleman said he was the Receiver—"I am the Receiver," and demanded those securities, and when refused until inquiry could be made, he pointed to some men who were sent with him as a *posse* to enforce the order. Well, now, if such a state of things can exist, or does exist, or ever existed, the Judge that made the order authorizing a burglarious assailement of that description, almost burglary, deserves very severe censure, and more than that.

Q. Do you know of any such case or any such order being made? A. I told you it was asserted that this attempt to drill a safe was made on an order.

Q. But this of going into the banker's? A. David Groesbeck of this city, a wealthy, responsible man, told me that occurred in his office within a year or two.

Q. Aside from the great railroad interests that are under your care, more or less, you are a man of large property, are you not? A. I am a man of some property, but the security of that property rests —

Q. I am coming to that. So far as you as a lawyer and a citizen, and a man engaged largely in affairs, would exercise your own judgment, do you know of anything in the personal condition of the judi-

ciary of New York, aside from the operations of the Code, the mingling of the system of law and equity, the condition of the Bar to engage and prosecute those great cases. Do you know of anything which should lead you to entertain a personal distrust of the judiciary of this city as compared with any other city or States in the Union?

A. If I don't answer you categorically, you must not infer that I think the public confidence with which justice is administered in the other great cities of the Union, take for instance Chicago and Boston, is on a par with that of New York; I don't think they are on a par. I know of no act of personal corruption on the part of any Judge in New York or elsewhere, and if I did, I should state it; I would, right square out.

Q. Is it not true that the controversies that come before the courts are very large, and involve great amounts? A. The existence of the controversy itself oftentimes affects interests much larger than the amounts involved in the specific case, and generally does. Take the very case you are defending for the Lake Shore road. Suppose an application was made before a loose Judge for a Receiver of that company pending this litigation that you have in charge, you would say it was monstrous. Suppose he granted an injunction and receivership, he would affect the market two or three millions. Justice, in order to render our property secure, must not only be administered honestly, but there has got to be a confidence in it which is quite essential to the administration of human affairs, and I would like to see these men vindicated or condemned. This state of things is unbearable, intolerable perhaps I would say.

Q. Is it not true that the interests involved, or the consequent interests that are involved, are very great? A. Immense.

Q. That those litigations are prosecuted with great zeal? A. I don't know that they are prosecuted with more zeal than prosecutions in former and better and purer days were prosecuted. I don't know that the litigations of the present day are prosecuted with more zeal than the cooler and calmer litigations of years ago. I think there have been as much zeal and ability exhibited many times in a thousand dollar controversy as is sometimes exhibited now in a controversy involving millions.

Q. I will ask you to say whether you know of anything which ought to reflect for this state of things that you have described on any particular Judge in the city of New York? A. I am afraid that is putting me in the condition of the Committee.

Q. I only ask for a fact, not an opinion? A. If you had a better Bench, you would have a better Bar; and if you had a better Bar, you would have a better Bench. I know of no act of personal corruption on the part of any judge. When I said, in respect to Judge Barnard, that I didn't believe that he would yield to a corrupt or mercenary motive, I would not extend that remark to all the Judges. That is what I mean, because that is a matter of opinion, and perhaps judgment as to personal character, and as to natural proclivities may have affected him somewhat.

Q. Don't you think that the disposition in the community is to admit, mostly, that respect for a judicial order has been very much impaired of late years. A. I think it is destroyed.

Q. Did you notice the fact that the other day an injunction signed by the Supreme Court was torn up in the presence of gentlemen of great distinction and high social position in this city, in the Erie Railway office. A. I saw that fact, and the impression that that fact made upon my mind was this—that a state of things like that needs cure, when men dare do such things. When you find men like the men in the Union Pacific R.R. Co, first class men all through the country, disregarding the injunction and taking their securities away—when you find that \$50,000 is paid upon precisely the same principle that you would pay \$50,000 to a bandit in Italy, who, unless you gave it, would have your ears (and that is the way the money was paid), when you find such a state of things as that, it shows something needs cure.

Q. Do you know what that money was paid for? A. I don't know. It was the subject of discussion and inquiry who got it. They asked what was said, and I took that occasion to state that, whatever might be said, I didn't believe that the man who took it ever gave a shilling of it to any Judge. Many people may, and some would doubt it, but the very fact that such a thing was done reflects discredit. I asked whom it was paid to, and I was told it was paid to Judge Fullerton; and I thought it very easy for the Committee having jurisdiction to send for persons and papers, to ask to whom the money was given, and what was done with it. It is very easy to make Mr. Cisco state whom he gave the \$50,000 to, and to exclude a conclusion, and if I was Judge Barnard I would ask to have it done.

Q. Have you heard any suggestions made on the subject of what the money was paid for? A. I am, perhaps, a closer scrutinizer of facts than other men in corporations. I not only endeavor to obtain the facts, but the proof of facts, and I apply the rules of evidence. Says I: "What knowledge have you that that money went so and so?" I have none." "What was said?" "Who said it?" "So and so." "Who paid the money?" "John J. Cisco." "How did he pay it." The secretary went off to find the books. "To whom did he pay it?" "To Mr. Fullerton." "Did Mr. Fullerton relate to whom he paid it?" That is the way I questioned him.

Q. What did he say? A. There was nothing asserted beyond the fact of the payment of the money by Mr. Cisco to Mr. Fullerton; it was paid out of the company's funds.

Q. There was no suggestion as to what the money was paid for? A. Yes, sir; there was. It was to buy peace, to get a change.

Q. Was it understood that Mr. Fullerton was the plaintiff's counsel? A. I didn't so understand it.

By Mr. TILDEN:

Q. He was counsel for the company at that time? A. For the Union Pacific Company. This was stated to be a sum paid independ-

ent of counsel's fees. I asked that question. Conjecture was made. They stated who the lawyers were. They happened all to be men whom I knew well, and I said that I knew Mr. Tilden would get no money clandestinely. He got his fees. I knew Judge Emmott would not, and I said I knew they were incapable of doing it, and I think Mr. Charles Tracy was mentioned in the same connection, and I expressed my own opinion that from any knowledge of his character he would not strike his client for other than his regular fees. This was a sum paid outside, that is, for outside interference and outside influence. There were those who reflected right square on the Judge, but no man knew, and I didn't believe it, and don't know.

Q. I find it difficult to appreciate the reason how Judge Fullerton could extort from his own client \$50,000—for what purpose? A. I do also; but if you will ask some of these other gentlemen who paid it, they will tell you. I know Mr. Wilson is in the city, and Mr. Dillon, and Mr. Ames. I was put on this Committee of the Union Pacific road under their general by-laws, which require the President of the company to be the Chairman of every one of the Special or Standing Committee. I was named, and Mr. Ames would come on here from Washington, to tell you the whole circumstances. They all desire to have their action, and the conduct of the company vindicated.

MR. TILDEN:

As Judge Emmott is away, it is proper to say, he was not in the case until long after; nor was I in it until March, 1869. This happened in 1868, so I heard.

WITNESS:

There was no allegation that it was paid to any of the counsel of the company. On the contrary, that fact was negatived. The burden of the complaint was that it was a scheme to pay others for the purpose of affecting others.

By MR. VAN COTT:

Q. Paid for peace? A. Yes, sir.

Q. To those who had power to disturb the peace? A. Yes, sir.

Q. Paid not to disturb the peace by injunction and Receiver? A. That is a technical way of stating it, but a layman would go no further than to say, to buy peace. Mr. Bushnell is a man you ought to call.

By MR. HILL:

Q. Was Mr. Olen G. Hazard one of the Directors of the road? A. I don't know. The active men were Mr. Ames, and Mr. John Duff, and Mr. Dillon. They are all men of well-known character.

Q. Who are the counsel at present for this Union Pacific road? A. I really don't know. I asked the question who had charge, because it was stated that this particular suit was pending, and I asked the question, who had charge of this suit, and I understood Mr. Emmott had.

I don't know whether they have any regular appointed attorneys. It is one of the evils of the times, of great companies, that their defences scatter. One man has charge of one thing, and one man of another.

Q. Do you know who drew this resolution that has been produced in evidence? A. No, sir; it was drawn by several people. They all have a hand in it.

Q. Do you know really who made any of the alterations, or by whom it was first suggested? A. I cannot state to you. A gentleman in Boston made the statement that they would vote to remove the offices when the thing was done in such a manner.

Q. You cannot tell how this resolution emanated? A. No, sir.

By Mr. TILDEN :

Q. It was drawn upon the spot, as far as you know? A. It was drawn up by four or five parties. It reflected upon no one. It contained no charges.

By Mr. HILL :

Q. Had the counsel in this city anything to do with it? A. No, sir.

Q. Having spoken of public sentiment in reference to the city here, at the time this act was passed by Congress, was not the public sentiment prevailing in the country, that the Union Pacific Railroad Company could secure almost any legislation in Congress? A. Well, yes, I guess so. Please repeat your question.

Q. My question is, whether, when that act was passed, it was not the general prevailing impression in the country that the Union Pacific Railroad Company could procure almost any legislation it desired in Congress? A. You mean by corrupt means—by fair means, or friendly legislation?

Q. Yes? A. It is part of the history of the times that Congress was favorable to the construction of this railroad, and it was deemed important to national existence that friendly aid in regard to all those enterprises should be had, such as land grants; but I never heard it asserted until lately that there had been any improper influence brought to bear upon Congress in reference to that matter.

Q. Didn't you understand that they had at that time strong and powerful lobbyists to affect legislation? Is it not a matter of general notoriety that they had such? A. I was not aware of it. I didn't think it necessary to lobby for it, and I happened to be in Congress at the time. The entire West was laboring for it. I have never heard any such assertion made.

By Mr. TILDEN :

Q. You spoke of a good many of the suits against the great corporations carried on in this city, having originated in speculation in stock. That is undoubtedly so; is it? A. I think so. When I say, "speculation in stock," I mean buying and selling stock. If a man sells stock, and a corporation goes short of what he wants, and if he

can use the means of a suit, and an injunction, and a receivership, to depress it, he makes his speculation successful.

Q. Is there not another class of suits frequently existing in this city against great corporations originating in the speculation of the plaintiff, or the counsel, or the two, that are independent of stock speculations? As you stated in what they frequently originated, I wish to call your attention to it to see whether you intended to make that exclude, or whether you are or are not aware that suits frequently originate in the desire of the plaintiff to blackmail or speculate out of those great corporations, either with his counsel or without him? A. I think so.

Q. So that there are two classes, and these evils and abuses do not arise mainly out of the operation of the stock market? A. The class of cases to which you refer exist.

By Mr. VAN COTT:

Q. Was not James Fisk, Jr., notorious for bringing suits of that character? A. I think it was well known to men largely engaged in the conduct of great corporations, that Mr. Fisk resorted to litigations to affect speculations. When I say "Mr. Fisk," it might be his firm. I don't know that I ought to name James Fisk, Jr. Taken generally, there is a good illustration in the case of the New York Central.

Q. Was it not notorious that injunctions and receiverships, ordered and appointed by Judge Barnard, were the instruments used by Mr. Fisk for those purposes?

Mr. HILL:

It seems to me particular suits should be pointed out.

Mr. VAN COTT:

We will come to that.

WITNESS:

I don't think I could meet that question, for I am not informed what particular judges have made these extraordinary and exceptional orders. At one time, to my knowledge, Judge Barnard had no sympathies with what are called the Fisk & Gould Company, and I have seen Judge Barnard hold the scales even and administer justice against those men. I was engaged in the Erie controversy. Before the Erie adjustment was made, no unusual order, no irregular order, no order think I had ever been taken exception to against them. I don't know which Judge has made the order which has led to these cases, and I know it has been considered of late that Judge Barnard held more friendly relations than formerly with the Erie party.

By Mr. TILDEN:

Q. What was the date of the Erie litigation? A. 1868; I think it may not have closed until 1869. I came into the litigation as one of the counsel of the Erie Company as against her Directors, after the

spurious stock had been issued. It was in 1868, the Legislature passed a law legalizing the issue. I had been concerned in the prosecution in the Supreme Court of the First Judicial District of the men who issued that spurious stock. That was all a fraud. It was settled. They removed to Jersey City, and after that, after the Legislature had passed a law, which Governor Fenton signed, which baptized all the iniquity—that was the starting point—the controversy was settled and some ten million of this spurious stock was bought up.

Q. You never heard of his being a stockholder? A. Well, I feel bound to say that I not only never heard that he was, but I heard that he was not, and you cannot say that of all of them. I heard he was not; I don't think that is his line.

Q. Last year was there a suit pending before him of the Erie Railway Company *vs.* Commodore Vanderbilt? A. Yes, sir; there was.

Q. Heard before him at General Term? Yes, sir.

Q. Involving a great amount of money? A. Involving ten millions of dollars nearly. It was a fictitious suit, and a suit without merit or without foundation.

Q. It was one of Fisk's suits, was it not? A. One of Field's suits!

Q. One of Fisk's suits? A. I don't know.

Q. It was brought in the name of the Erie Railway Company? A. Yes, sir; one of Field's suits. Mr. Fisk told me that his code of morals was higher than to bring such suits as that. I won't let you defame the memory of a man who is gone, by saying he ever advised such a suit as that, for I don't think he did. It was an Erie suit to recover back the money which had been paid for the spurious stock which they bought from some of the stockholders after Gov. Fenton ratified this decision. They bought this stock up by the authority of the court. The court in this district authorized them to retire the order, and they bought the stock up from the injured parties, and if they had not bought it up Judge Barnard would have failed in his jurisdiction or would have to punish those men for that ten million fraud. That case came on for trial before Judge Barnard without a jury, and I will say that the defendant's applied for a jury, because in a suit affecting such large interests a great many said: "you are not safe." I take the responsibility of saying, or of expressing my judgment that whatever Judge Barnard might do in preliminary orders, or, if you please, in reckless or unwise orders pending the litigation, that on the merits he would not be corrupt, and that there was no danger. I expressed that opinion at the time, and in a consultation of counsel and all the parties in interest. The plaintiff was pressing the case before Judge Barnard, and I said: "Let him have that tribunal." That was the judgment that I had formed in respect to Judge Barnard's freedom from mercenary influences. I feel bound to state it.

Q. The case went on and was tried? A. The case went on before Judge Barnard, and he heard it on the merits. I objected to a jury, and Judge Barnard refused the application of the defendant for a jury. The defendant applied for an issue. It was an equity case. The defendant applied to have the issue framed, to have it tried by a jury

That was opposed by Mr. Field. Judge Barnard denied that. It was tried by Judge Barnard without a jury; he heard it and heard it fairly. Fisk and Gould were both witnesses. Mr. Field pressed it with all of his usual zeal and pertinacity, and the judgment, which no one has ever questioned, he could have rendered no other judgment—but the judgment was against the Erie Railway Company. They brought the suit.

CHARLES TRACY sworn: Examined by Mr. Stickney.

Q. You are attorney and counsellor-at-law in New York city? A. Yes, sir.

Q. And have been for how many years? A. Constantly since the Autumn of 1848, previously a short time.

Q. You have been engaged as counsel in the litigation between James Fisk, Jr., and the Union Pacific R. R. Co.? A. Yes, sir; my firm of Tracy & Olmstead were counsel for that company, and I was standing counsel for the company in New York at that time, and other gentlemen were associated in that litigation as counsel.

Q. Do you remember the time when the suit of *Fisk vs. The Union Pacific R. R. Co.* was begun? A. The summons was dated July 2nd, 1868, and was served about that time.

Q. There were various proceedings from that time up to the month of March, 1869? A. Yes, sir.

Q. We will begin at that time, if you please. Will you state to the Committee what took place about the 9th of March, 1869, in relation to the election for a Board of Directors for the Union Pacific R. R. Co.? A. On the morning of the election at the office of the company in the State of New York where the election had been ordered to be held by resolution of the company, an injunction in that case, issued by Judge Barnard, was served on the Directors, many of whom were present.

By Mr. CURTIS:

Q. Does this printed book claim to be correct copies of the court papers? A. Yes, sir; I had that book prepared myself in my office.

Mr. STICKNEY:

We will put in evidence, in the first place, the original summons and complaint in the suit of *James Fisk, Jr., vs. The Union Pacific R. R. and others.*

Mr. NILES:

Under which charge does that come?

Mr. STICKNEY:

We will make a specific charge to cover this, but it comes under the last charge.

Mr. CURTIS:

Does that come under the charge of favoritism?

Mr. STICKNEY:

Yes, we believe it to be a case of that kind.

Mr. NILES :

We will permit a charge connected with the Union Pacific R. R. Co.

[Summons in the suit of James Fisk, Jr., *vs.* The Union Pacific R. R. Co., marked "Charge 9 A." Complaint in same suit marked "Charge 9 B."]

By Mr. STICKNEY :

Q. Will you refer to the injunction that was granted on the 9th of March? A. I have it here.

Mr. STICKNEY :

The injunction which was granted on the original summons and complaint we will put in evidence.

Injunction marked "Charge 9, C."

Mr. NILES :

I don't know but it would be fair enough to Judge Barnard to show the case remained in his Court from July to March, on a motion to remove.

WITNESS :

At the time of this injunction there was then a first supplemental complaint which was verified the 6th of March, 1869.

Mr. STICKNEY :

We will put in evidence the second injunction in this suit of *Fisk vs. The Union Pacific R. R. Co.*, dated March 9th, 1869.

Mr. TILDEN :

That is the injunction against the election?

Mr. STICKNEY :

Against the election. The supplemental complaint, on which the same was granted, with the amended summons, we put in evidence.

Mr. TILDEN :

The summons, the supplemental complaint, the injunction, and was there an affidavit accompanying that?

Mr. STICKNEY :

No, sir.

[Summons marked "Charge 9 D," and complaint marked "Charge 9 E." Injunction marked "Charge 9 F."]

Q. Will you state when the day of the election for Directors of this Company had been fixed and how? A. It was fixed at the previous meeting. The Act of Congress provided that the matter should determine the place. The time was fixed by the Act of Congress itself.

By Mr. TILDEN :

Q. And the previous meeting fixed the place at New York? A. Yes, sir. The joint resolution of Congress, passed December 20th, 1867, provided that the time of holding the annual meeting for choice of Directors was changed from the first Wednesday in October to the first Wednesday following the 4th of March. I believe it came on the 10th of March, and then the stockholders were to determine the place where it should be held, and it should be either New York, Washington, Boston, Baltimore, Philadelphia, Cincinnati, Chicago or St. Louis; and the Act further provided that on that day the existing Board should go out—their term should cease, those who had been previously elected, whose year was not up. A resolution had been passed fixing New York as the place.

Q. A resolution had been passed on the charter day in 1868, fixing the place of meeting in New York for the charter day in 1869? A. Yes sir.

Q. That is to say, it had been fixed the year previous? A. Yes, sir; in the previous year.

Q. And the time was fixed by Act of Congress. A. Yes sir; was subsequently fixed by Act of Congress.

By Mr. STICKNEY :

Q. How long before this injunction was served upon you had this suit actually been pending? A. It had been pending since early in July, 1868.

Q. Had any notice of motion for the order restraining the election been given to the R. R. Company? A. None at all, and it was served on the morning of the election, for that purpose. I arrived at the election a little while after the hour, and I think I was sent for and came in there and found that several had been served with an injunction.

Q. How long before the election actually began was the injunction served? A. Upon that subject there was some conflict of statement. It would seem that some gentlemen were served with it when holding the election, and some were not served with it at all, and some were served with it before the election. The party was there to serve them all, but he did not succeed in serving them all.

By Mr. NILES :

Q. Was the hour for opening the polls stated then? A. No, sir.

Q. How long before the hour fixed for opening the polls was the first notice of injunction, as far as you know? A. Exactly at that time, or a few minutes after.

Q. Do I understand you to say that the Act of Congress provided for the term of the existing Directors expiring, even though no successors were appointed, so that in case they were enjoined from appointing a new Board there would be no manager? A. I will repeat the language of the Act; "And provided, further, that on the election of Directors herein provided for, to take place in March, 1868, the

term of all persons then acting, or claiming a right to act, as Director of said company, shall cease and determine." That is the act of December 20th, 1867. I might give you some explanation of that circumstance. There had been a controversy at the previous election about who were assignees, and who had a right to hold the polls. There were two polls held, one on each side of the table, and two Boards of Directors chosen, which were not exactly the same, but virtually the same, and there was some disagreement among them; it was a matter of some obscurity, whether the old Board was holding over, or the Directors in were the chosen persons, and no adjudication was had about it; the Board had enough of old element to make it legal to go on, and hence this Act of Congress I suppose, which was drawn to settle that question as if they were chosen on that day the entire term would not have been out until March. What it was for I don't know.

Q. What was the provision about the next preceding term? A. Nothing in that act.

By Mr. STICKNEY:

Q. The election of Directors held in March, 1868, was for how long a term? A. It was for one year, it was understood to be.

Q. Did you not advise the Directors that there was a doubt whether they could hold over? A. I can not speak from recollection about that now. The reading of the Act would suggest the question, but whether I was asked to advise them I cannot say, in as much they expected peaceably to hold the election and elect a Board. The question had not been presented to me, whether they could hold over. They may have been advising with some other gentlemen about it; I cannot say.

Q. If you look at the 7th section of the supplemental complaint, you will observe that it says: First. It seems that on filing the said complaint the plaintiff has ascertained the corporation defendant intends to hold its annual election for Directors for the ensuing year, on the 10th of March, 1869; and, secondly, that at such election it threatens to refuse to permit the plaintiff to vote on the 20,000 shares subscribed for by him as stated in the complaint for which he holds no certificate. Didn't the plaintiff have notice, from the beginning of the suit in July, that the company disputed his right to subscribe for those 20,000 shares of stock? A. He had his subscription rejected when it was offered.

Q. About when was that? A. The 21st of September, 1867.

Q. He knew from that time and ever after that the company denied his right to subscribe for that stock? A. He did.

By Mr. NILES:

Q. Did that fact appear in any prior paper in this action? A. In the first complaint he alleges that he offered to subscribe, and tendered 55 per cent. of the amount in four different subscriptions, amounting together to 5,000 shares each, three at New York and one in Chicago

on the same day, and that he tendered the 55 per cent. on the 5,000 shares each time, and that they refused to receive the money and receive the subsequent subscription. He wrote his name in the book, but they refused it because he didn't tender a sufficient sum.

By MR. TILDEN :

Q. In respect to that stock will you refer to the clause of the amended charter that prescribed what payment should be made at the time of subscribing for the new stock? A. It is in the second section of the Amended Charter, July 2d, 1864. It is in these words: I should say first there is a provision for the original subscription at the beginning of the company, and provides that every subscriber on subscribing must pay 10 per cent. in cash. Then there is a provision for future subscriptions to be offered to the public by the Directors at the office of the company, and then comes the clause as to this original subscription. "No subscription for said stock shall be deemed valid unless the subscriber thereof shall, at the time of subscribing, pay or remit to the Treasurer of the company an amount per share subscribed by him equal to the amount per share previously paid by the then existing stockholder. The said company shall make assessments upon its stockholders of not less than five dollars per share, and at intervals of not exceeding six months from and after the passage of this act, until the par value of all shares subscribed for shall be fully paid, and money only shall be receivable for any such assessment, or its equivalents, for any portion of the capital stock herein authorized."

Q. In respect to all of the stock of the company then existing, except the certain shares that had been issued soon after the organization of the company, had not that stock been paid in full? A. It had been paid in full as to nearly all the shares. There were some parties one or more, abroad, and there were some assets I think that were not in a condition to pay, and there were a good many forfeited shares. Taking the initial ten per cent. and the half yearly five per cent., 55 per cent. would have been the sum which they had paid for, and the stock was substantially and fully paid stock nearly all of it at that time.

Q. Is it in your knowledge that at that time the company had applied for advice and were advised it was their duty to require, on a subscription of company stock, payment in money? A. The President was so advised by counsel, and the Treasurer was so instructed, and acted upon that in all subscriptions, rejecting all that were not offered in full.

Q. Were the certified checks for \$275,000 which were offered in payment of 55 per cent. on the first 5,000 shares, were those checks the identical same checks that were offered on the second and the third and the fourth subscriptions of 5,000 shares each? A. Three subscriptions of 5,000 each were made at the Company's office in New York.

By MR. STICKNEY :

Q. Were you present at that time? A. I was in the office at the

time. I was not in the Treasurer's room, but I saw Mr. Fisk take in the certified checks and bring them out again after making the first subscription, and I afterwards saw his subscription written in the book. He gathered in these checks and came out and reported he had subscribed, and they had rejected the checks. Then he went in and repeated the operation and came out and made a like report, and, shortly after, went in a third time and came out and made a like report. The fourth was made in Chicago, and there was a draft of some kind that came afterwards and was not paid or rejected.

By Mr. TILDEN :

Q. The three tenders of subscriptions were made with the same identical checks ? A. Yes, sir.

Q. Whose checks were those ? A. I don't remember whose checks they were, but they were not Mr. Fisk's checks, nor were they his property. He was acting there as the banker and agent of other parties, as I understood from the conversation, and it was suggested and spoken of. I didn't know exactly for whom he was acting ; I had an impression about it. Perhaps one party was in Boston, and one in New York.

Q. Was the refusal to receive the subscription placed on that ground ? A. I was not in the room ; I don't know.

Q. Or, as belonging to other parties ? A. I don't suppose it was placed on other grounds. I suppose it was put on the ground, that the Treasurer was so advised, for I know he refused bank notes of the same form.

By Mr. TILDEN :

Q. It was on the ground, that 55 per cent. was an inadequate compliance with the law, which required, that the new subscribers should pay up the former amounts the old subscribers had paid ? A. That was it. That is the case, for I know a very large amount of currency was presented to the Treasurer and he refused to take it.

Q. On that particular action the Company applied to Mr. Tilden for advice ? A. Yes, sir ; and the President came himself, did he not ?

Mr. TILDEN ;

I believe he did.

By Mr. STICKNEY :

Q. Between the time when these tenders were made and the subscriptions offered on the 21st of September, 1867, and the commencement of the suit, had either Mr. Fisk, or the parties for whom he had acted, taken any action to enforce in the Courts those subscriptions ? A. No, sir ; except by bringing that suit.

Q. It was nearly a year afterwards ? A. It was some time afterwards. On the other hand, directly after the subscriptions, and with a view to which I suppose they were made, there was an election in the Company, and strongly contested, and no one offered to vote on those shares. I was present at one election throughout.

Q. In the original complaint in this action, the plaintiff, (Fisk), sets forth, that he is the owner and holder of six other shares that stand in his name on the company's books, and that certain contracts have been made between The Union Pacific R. R. Co., and the *Credit Mobilier* of America. Did the endorsement on the certificate for the six shares, which the plaintiff held, show subject to what rights he took those shares? A. The certificate bore an endorsement; as did all the existing certificates, that the holder took those shares subject to the Oakes Ames contract, and to the assignment thereof to the Trustees. That Oakes Ames contract and that assignment thereof is the gravamen of his case.

Q. And on that he complained? A. Yes, sir.

By Mr. TILDEN:

Q. The object the complaint sets out? A. Yes; it does not state it all, but it is the allegation that the Oakes Ames contract had produced a large profit to the Credit Mobilier and the stockholders of the Credit Mobilier incidentally, and that by means of his six shares he thought to get some benefit from that or set it aside, whereas, the six shares were subject to that arrangement; the contract with Oakes Ames was for the construction of a large portion of the road of the company, and there was some question among the Directors as to the proper price for it; some thought it was too high; there had been a good deal of debate about that matter, and ultimately one who opposed it the most, said he would give his consent if every shareholder of the company would give their assent to the contract, and to the assignment of it, and not otherwise, and the contract was adopted on that basis, that it should not be of effect until they all assented, and they all did assent, and after they did assent and returned their certificates, and had their certificates indorsed in red ink with this inscription from the holders, it was subject to that arrangement.

Q. How long before the commencement of this suit had that Oakes Ames contract, subject to which this stock was taken, been entertained into? A. The 19th day of October, 1867; I recollect perfectly well the Oakes Ames contract was made before that contested election, and this assignment was afterwards.

By Mr. TILDEN:

Q. This election was in 1867? A. Yes, sir; and I think it is the 19th day of October, 1866.

Q. That must have been the spring of 1867, the contested election was? A. I think the contract was earlier than that, perhaps it was later; the 16th of August, 1867; the date I had of October 19th was the date the trust deed was completed; it was drawn in this house and I assisted in drawing it; that corresponds with my recollection; it was made then, and the election was afterwards, and subsequently, the assignment to the trustees was made, and then the acquiescence of all the shareholders.

Q. This suit was commenced when? A. The 3d of July, 1868.

Q. I wish you would look at the fourth subdivision of the supplemental complaint and see whether there is anything alleged further than that if the complainant is prevented from voting on those shares at the election, the election will, as he verily believes, eventuate far different and much worse to the interest of the stockholders than if he was permitted to vote? A. I see it.

Q. Was there any other allegation in the complaint, or any affidavit accompanying the complaint, on which this injunction stopping the election was granted? A. There was nothing; it was granted simply on that supplemental complaint, and the original complaint and injunction restraining those from holding the election until his rights were determined.

Q. Is there anything else? A. That is all.

Q. At the election held at that time, how many shares voted? A. I don't remember.

Q. Was the number of shares voted on at that election, as nearly as you can recollect, somewhat over 200,000 shares? A. That is my impression; it was so great, that to vote on 20,000 would not have varied the election.

By Mr. NILES:

Q. Is that your best recollection? A. Yes, sir.

By Mr. TILDEN:

Q. Were all those votes given for one set of directors? A. They were.

Q. Was it a unanimous vote? A. A perfectly unanimous and cordial election.

Q. If the plaintiff had been allowed to vote on his 20,000 shares, his vote would not have been over one-eleventh part of the vote cast for one ticket? A. It would have been a very small and incomparative fraction of the whole vote.

Q. It would have made no difference in the result of the election? A. None at all.

Q. Was there any reason to suppose prior to the election that there would be any controversy on the election day in regard to the election of Directors? A. None that ever came to my knowledge or recollection.

Q. Was it not then just as well known, at the time this injunction was granted, that the vote on these 20,000 shares, as far as could be judged without a further event, would be totally unaffected by the voting on those 20,000 shares as if they were not voted on? A. I suppose it was perfectly known to all persons concerned.

By Mr. STICKNEY:

Q. Did Mr. Fisk ask for an injunction or an order of any kind to compel them to receive his vote, or for an injunction enjoining the election altogether? A. He asked simply for an injunction against, "Holding or allowing to be held, voting, or receiving votes, or doing any act towards any election of officers of the Union Pacific Railroad Com-

pany until the title of the plaintiff to the stock set forth in the complaint is determined."

Q. State whether or not there had been, on the part of the plaintiff, during this litigation, many attempts to get an examination of the books and papers of this Company, and what those attempts had been?

A. There were several attempts made to obtain an examination of the books and papers of the Company under the pretext of obtaining affidavits to support motions.

Q. State what was the next proceeding had? A. The next proceeding in order was the arrest of these gentlemen for violation of the injunction.

Q. I refer now to the first order appointing a Receiver, the one that appears on page 117, or it is an order to show cause why a Receiver should not be appointed? A. That order was made on the 12th of March.

Mr. STICKNEY:

We will put in evidence the order to show cause in this suit made on the 12th of March, 1869, by Judge Barnard, why a Receiver of certain property and assets should not be granted. [Marked "Charge 9, G."]

Mr. STICKNEY:

And the affidavit of James Fisk, Jr., and the affidavit of David A. Schomp, on which that was granted. [Affidavit of James Fisk, Jr., marked "Charge 9, H." Affidavit of David A. Schomp, marked "Charge 9, J."]

Mr. STICKNEY:

We will then put in evidence the order made by Judge Barnard on the 18th day of March, on this order to show cause just put in evidence—the order of the 18th of March—appointing William M. Tweed, Jr., Receiver, and the affidavits of Adin H. Whitmore and James Fisk, Jr., on which the same was granted. [Order of March 18th, marked "Charge 9, K." Affidavit of Adin H. Whitmore, dated March 16th, marked "Charge 9, L." Affidavit of James Fisk, Jr., marked "Charge 9, M."]

Mr. STICKNEY:

We then put in evidence the order of the 18th of March, granted by Judge Barnard, for a writ of assistance, and the affidavit of Thomas G. Shearman in the same suit, on which the same was granted. [Affidavit of Thomas G. Shearman, marked "Charge 9, N." Writ of Assistance, marked "Charge 9, O."]

Q. I will ask you whether the order of the 12th of March to show cause, and the order of the 18th of March appointing Tweed Receiver, and the order of the 18th of March that a writ of assistance issue, were granted on a hearing, or granted *ex parte*? A. *Ex parte*.

By Mr. TILDEN :

Q. All of them? A. Yes, sir.

Mr. STICKNEY :

We will then put in evidence the order granted by Judge Barnard on the 20th of March, and the affidavit of Thomas C. Durant, which was read in opposition on the part of the defendant.

[Affidavit of Thomas C. Durant, marked "Charge 9, P." Order granted by Judge Barnard on the 20th of March, marked "Charge 9, Q."]

Mr. STICKNEY :

I will then put in evidence the affidavit of Edward Ensign and the second supplemental complaint and the order of the 23d of March, granted by Judge Barnard, enjoining the defendants from performing certain acts.

[Affidavit of Edward Ensign marked "Charge 9, R." The second supplemental complaint marked "Charge 9, S." Order of March 23d, marked "Charge 9, T."]

Mr. STICKNEY :

We then put in evidence a petition for removal on the part of the Credit Mobilier of America and others, parties defendants, sworn to on the 27th of March, 1869, and the bond which was given and approved by the Court, and the order of Judge Rosekrans made on the 27th of March, 1869, for the removal of the suit.

WITNESS: The petition for the removal of this case on the part of the Union Pacific R. R. Co., under the act of Congress authorizing it, as a United States corporation, to remove it, was presented a long time before that to Judge Barnard, and after some delay was heard by him and the papers retained by him some time, and he decided it on the 4th of March next, before this election on the 10th.

[Petition marked "Charge 9, U." Order of Judge Rosekrans of March 27th, 1869, marked "Charge 9, V."]

Mr. STICKNEY :

We put in evidence the order made by Judge Barnard on the 27th of March, 1869, requiring the defendants to show cause why Judge Rosekrans' order should not be vacated.

[Marked "Charge 9, W."]

Mr. STICKNEY :

Then the order made by Judge Barnard on the 29th day of March, 1869, on the return day of the last order, with the affidavit of Edward Ensign, on which the same was granted.

[Affidavit of Ensign, marked "Charge 9, X." Order of Judge Barnard of March 29th, 1869, marked "Charge 9, Y."]

Mr. STICKNEY :

Then we put in evidence the notice of appeal from Judge Barnard's order of the 29th, and the stay of proceedings pending that appeal.

[Notice of appeal marked "Charge 9, Z." Stay of proceedings, marked "Charge 9, A 1."]

Mr. STICKNEY :

Then we put in evidence the order to show cause granted by Judge Barnard on the 31st of March, 1869, and the order thereon granted setting aside the proceedings on the same day.

[Order to show cause, marked "Charge 9, B 1." Order setting aside the stay of proceedings, marked "Charge 9, C 1."]

Mr. STICKNEY :

Then we will put in evidence the order of the 30th of March, 1869, giving instructions and directions to the Receiver.

[Order of March 30th, 1869, marked "Charge 9 D, 1."]

Mr. STICKNEY :

We will put in evidence the report of William M. Tweed, Jr., Receiver, and the order made by Judge Barnard on the 30th of March, 1869, directing the lock to be picked, or the safe to be blown open, from the files of the County Clerk's office.

[Mr. Stickney read in evidence the following report of William M. Tweed, Jr., Receiver etc. :]

NEW YORK SUPREME COURT.

"In the matter of the Receivership of certain property of the Credit Mobilier of America and the Union Pacific R. R. Co.

"To the Justices of the Supreme Court of the State of New York, the report of William M. Tweed, Jr., Receiver, as above, respectfully shows :

"First, that by an order duly made in a certain action in the said Court, wherein James Fisk, Jr., was plaintiff, and the Union Pacific R. R. Co. and others were defendants, he was appointed the Receiver of certain property therein more particularly mentioned.

"Second, that the safe in the office of the Union Pacific Railroad Company contains, as he is informed and believes, the books of the said company, and it is necessary for him to have access thereto. That said safe is locked and the key is in the possession of the Deputy Sheriff, but the combination necessary to open the same is not known to the said Deputy or to the Receiver, but is known to certain officers of the said Railroad Company, who will not furnish the same, and moreover, have retained a portion of the keys.

"Third, that he has had the safe examined, and finds that the lock can be picked, and the safe can be cut open, wherefore he asks the direction of the Court in the premises.

"All of which is respectfully submitted, this 30th day of March, 1869.

"WILLIAM M. TWEED, JR.,
"Receiver."

"Supreme Court, in the matter of the receivership of certain property of the Credit Mobilier of America, and the Union Pacific Railroad Company."

"SPECIAL TERM,

March 30th, 1869.

"Present, BARNARD, J.

"Upon reading and filing the report of the Receiver, dated this day, it is ordered that the Receiver be and he is hereby authorized and directed to open the safe of the Union Pacific Railroad Company, either by picking the lock, or cutting, or blowing open the same as he may think best."

Enter, GEORGE G. BARNARD,
J. S. C."

The signature being admitted to be Judge Barnard's.

By Mr. TILDEN :

Q. Were the offices of the company taken possession of by a force, a sort of posse, at this time? A. Yes, sir; that part of the office in which the ordinary business was done; the one containing the desk and counters of the clerks and the safe was taken possession of by those people. There were some rooms of the company which those people didn't move about in much, seldom went in, which were mere chambers for consultation and correspondence. The principal place where the business was done, that within the railing, like that in a bank, was held by these men by a very considerable force and for a very long time, and they kept relays of men, so that they were there night and day.

Q. Did it present the aspect of a small camp in possession of a force? A. I should think that might be so, although I have not the experience of the condition of a camp to say in that case.

By Mr. STICKNEY :

Q. Did they proceed to blow open or cut open the safe under this order? A. They worked at the safe with tools, and made a great noise, and worked at it a great while.

Q. With sledges? A. Yes, sir; with every sort of heavy tools, and afterwards made an entrance into it in such form as to destroy the lock, and opened the door, and the lock was no longer serviceable; hence this garrison which was kept there to watch it afterwards. The Receiver and the people entered it to their satisfaction, I suppose, and every one else was kept off by this garrison.

Q. How soon afterwards, or at what time were the property and

the books and papers of this company removed from New York city to Boston? A. The books and papers which fell into the hands of the Receiver could not be removed. Other things, various matters which were not vouchers, went off to Boston gradually; I don't know exactly how fast they went, but everything he had a claim on he retained. There were some account books of various parties there in the building. Mr. Durant for some time had his private office adjacent to this, having it on the same floor where the safe was which was built up from the foundation of the building; on one side was a safe of his, and that was not disturbed, and his own desks were not disturbed, but the company's safes they held possession of, and what they did with the books I don't know.

Q. You attended before Judge Barnard in open court, on various occasions between the 20th and 24th of March, 1869, on the examination of Thomas C. Durant, did you not? A. Yes, sir.

Q. State what remarks Judge Barnard made at that time in open court from the bench, in reference to this litigation and these directors—what you heard him say? A. I read this morning some stenographic notes to refresh my recollection. On many occasions Judge Barnard spoke as a Judge naturally does in debate, but if there is any particular thing you wish me to speak of, you had better draw my attention to it. There are a good many remarks in the full report of the proceedings which were made by the Judge and by the counsel.

Q. From your recollection, state what was said on any one occasion. A. On one occasion there was a matter came up about driving people from town.

By Mr. CURTIS:

Q. What was under argument at this time? A. I don't know. I know a witness was on the stand, and it is my impression it was Dr. Durant that was on the stand; I am quite sure it was Dr. Durant, and during the course of the examination it was said or asked by somebody of Mr. Durant what had been said about what Judge Barnard had said in respect to driving folks out of town, and Judge Barnard interrupted and said: "This is what I said, was it not? I said I had driven one set of damned rascals out of the State, and I would drive out another." That is about it, some expression of that kind, and the general business passed on afterwards; but I don't find that in the minutes, but it was openly said; it was in reference to something the witness stated as to something that Judge Barnard said, or heard he said. Where it came from, I don't remember, but the circumstance of Judge Barnard speaking up in that manner is very distinct, as I recollect it.

Q. In what court do you remember it was? A. I should think it was the court-room of the Supreme Court, which is on the Chambers street side. That is my impression. I speak from recollection about that. I am quite sure when Mr. Alley was examined before Judge Barnard, it was in the middle room, but when Mr. Durant was examined, I think it was the north room, which we call the General Term room.

Q. Whom did you understand Judge Barnard to refer to by the set of damned rascals who had already been driven out? A. I don't think anything was said there to indicate what persons he referred to, either by the language he used, by the interrogation that he used, or the remarks that he made. I had my own inference about it.

Q. Whom did you understand him to mean? A. I would state it was uncertain in my mind which of the two set of men he referred to. I didn't know but he referred to a set of Erie directors who left the State for a while, during a litigation, or whether he referred to the Chicago, Rock Island and Pacific people, who carried their funds out of the State. The remark might be applicable to either of them, and I don't know to which set of men he referred.

By Mr. TILDEN:

Q. Will you state the circumstances about the injunction order granted against the Corn Exchange Bank as auxiliary to this litigation? A. If I state that I must do it from recollection, because I have no memorandum before me about it, or paper; but that was in an action of Tweed as Receiver, I think. The action was brought by William M. Tweed, Jr., as Receiver of the property of the Union Pacific Railroad Company, *vs.* Henry C. Crane and the Corn Exchange Bank. The injunction is dated April 9th, 1869.

Mr. STICKNEY:

We wish to put in evidence the affidavits of Oakes Ames and others, and the affidavits of Oliver Ames and others.

[Affidavits of Oakes Ames and others, marked "Charge 9, E1." Affidavits of Oliver Ames and others, marked "Charge 9, F1."]

Q. How early had any petition for the removal of this case to the United States Circuit Court been presented to the Supreme Court?

A. The first step for removal was the petition of the Union Pacific R. R. Co., and John J. Cisco, C. H. Macey, Charles A. Lamhard, Sidney Dillon and Thomas C. Durant, who were members of the Company, and the Directors. That petition was verified the 31st of July, 1868, accompanied with the bond, and was on the 31st day of July, 1868, presented in the Supreme Court at Chambers, to Judge Cardozo, who thereupon made the order to show cause, returnable the first Monday of August, at twelve o'clock at noon, why the petition should not then be filed, and the prayer granted.

By Mr. TILDEN:

Q. Was the first Monday in August the 3d day of August? A. I think it was. On that day, and afterwards, and from time to time, the hearing was adjourned for one reason and another, and it was ultimately heard before Mr. Justice Barnard. The petition and the bond and all the papers were before him, and argument was heard, and he retained the papers during the whole winter, and filed his opinion on the fourth day of March, 1869, giving an opinion that the application should be denied, and made an order denying it, dated the 10th day of March, which was filed with the Clerk, March 13th, 1869.

Q. After the injunction? A. Yes, sir; the injunction was the 9th of March, 1869, and the order for arresting a number of the parties for contempt by attachment, was made the 10th, the afternoon of the election, and was proceeded in the next day.

Q. Will you look at your own affidavit in regard to the presentation of the petition and bond for the removal of this case to the United States Court, and see if it refreshes your memory as to the day when that petition and bond were presented to Judge Barnard? A. The first Monday of August was the 3d day of August.

Q. Will you now state positively whether or not, on that third day of August, you presented to Judge Barnard the petition for removal, and the bond accompanying it, required by statute? A. I did.

Q. Who else was present when you did that? A. Mr. Fullerton.

Q. And your son? A. No, sir; I think it was my clerk, Mr. Pearson; Mr. Fullerton was present.

Q. I think you will find your son made one affidavit? A. Yes, sir; he did; yes, sir, Mr. Fullerton, myself and Charles Edward Tracy, a law student, and now my partner, were present; these papers were in Court on a motion to dissolve the injunction before Judges Nelson and Blatchford, and the particular point of those three affidavits was to show the bond was presented in the Supreme Court; afterwards it seems to have become lost and could not be found, and the fact was verified by three gentlemen who were present.

[Affidavit of Charles Tracy, marked "Charge 9, G1." Affidavit of Mr. Fullerton, marked "Charge 9, H1." Affidavit of Charles Edward Tracy, marked "Charge 9, J1."]

By Mr. TILDEN:

Q. Did you afterwards see that bond in a bundle of papers handed to you by Judge Barnard, and which you returned to him? A. Yes, sir; on one occasion when I attended the Court for the purpose of a hearing before Judge Barnard, and we waited some time and there was not anything else coming on, and for some cause it could not be heard, I think the counsel on the other side could not be heard, and the Judge was waiting on the bench, and remarked it was a pretty large bundle of papers, and wished I would look at it and see if there was anything he need not be carrying around, and I looked through it, and saw the bond for one thing, and handed it back to him, and said there was nothing there but what he had better retain.

Q. Did you argue before Judge Barnard and the other counsel the question of removal some time during the interval between the 3d of August and the time of his decision of the question? A. Yes, sir; I did. These were the dates. The 3d of August we were before the Judge and Mr. Field, the plaintiff's counsel was absent from home, and Judge Barnard directed the papers to be handed to him on the supposition that the plaintiff's counsel should have until the third Monday of August to prepare a brief in opposition, and thereupon I handed up all the papers, consisting of the verified petition, the order to show cause, the proof of service and the bond, with the affidavit of sufficiency of

sureties and certificate of acknowledgment, and also a certified copy of the Act of Congress of July 27th, 1868, under which the removal was claimed, and also Mr. Fullerton's brief, and I stated to the Judge that the bundle contained the petition, bond, act and brief. On the first Monday of October, 1868, Judge Barnard adjourned all motions in the action to October 20th, and on October 20th he adjourned it until November 7th; November 7th being Saturday, I attended Court, and Judge Barnard was not likely to arrive; some word came that he would not be there that morning, and the case went over until the following Saturday. On the following Saturday Judge Barnard adjourned it to the 17th of November, and on the 17th of November he adjourned notice of motion until the 28th, and on the 28th he not being there it went over to December 2d, and then it was adjourned to December 15th, and on the 15th Mr. Field came into Court and made an oral argument in opposition to the proposed removal, and on the 17th of December I and Mr. Macfarland, as counsel for the petitioners, delivered an oral argument in support of the said removal.

Q. Were written briefs submitted? A. Written briefs were submitted before on our part. The occasion when I returned the bond to Judge Barnard on the bench, as I said before, was the 2d of September, when he asked me to look through the papers as I have mentioned.

Q. Do you remember that in the month of March, after the injunction against holding the election, the Company were advised by their counsel that the case had already gone to the Federal Court by operation of law on the 3d of August, and that Judge Barnard's Court had lost jurisdiction? A. Yes, sir; the Company were so distinctly advised by their counsel that the removal was perfect when the petition and bond were filed, and that the subsequent proceedings had not changed that state of things.

Q. Do you remember that about the last of March that point was fully argued before Judge Blatchford? A. It was an application for a mandamus in the Circuit Court of the United States, and there was a motion where the whole thing was argued as to the removal at that time.

Q. Do you remember that, on or about the 6th of April, Judge Blatchford delivered an opinion sustaining that view of the case? A. He did. He sustained the view that the case was removed, but denied the mandamus on the ground that he thought he had not jurisdiction to give that writ.

Q. Had you ever heard, from the time you presented this petition and bond on the 3d of August, up to that argument before Judge Blatchford, any objection made that the statute of removal had not been fully complied with by the due presentation of a bond accompanying the petition? A. No, sir; and according to my present recollection it was at a later day than that, that I ever heard any question about the bond, but I cannot name the time; it was a good while after this event, and then it was not distinctly stated, but through the newspapers it appeared that Judge Barnard on some occasion said he found no bond among the papers.

Q. Didn't the Judge deny that he ever had the bond presented to him, or ever saw it? A. I don't remember his language except as I saw it in the newspapers. My impression is I got it from the newspapers; I didn't hear it, and was not present at its stating, and how it was stated I don't recall now, whether it was stated there never was a bond among the papers, or that he had never seen one, or could not find one, I don't remember.

By Mr. HILL:

Q. Don't the opinion show whether it was or not? A. His opinion shows whether it was there. He argues the question as if the bond was there, and the question of the—

By Mr. TILDEN:

Q. Is there anything in his opinion denying your motion for removal intimating any defect arising from the absence of the bond?

A. No, sir; the removal was denied on the ground that there being other defendants the Company could not have the removal. That was the ground, and it was argued at large in the opinion.

Q. And the opinion was precisely as if the papers were regular in form; it was simply on a question of law? A. Yes, sir.

Q. Did you not read a report in the newspapers of remarks said to be made by Judge Barnard in court subsequent to the opinion of Judge Blatchford, in which Judge Barnard denied that a bond had ever been presented?

Mr. ANDREWS:

I suggest that is the extreme of all questions conceivable. I object to it. I submit that if that latitude is to be taken in any investigation, it is time it should be understood.

Mr. TILDEN:

I submit it is pertinent to this inquiry to know what was the occasion of these affidavits. After this case had been eight or nine months pending in Judge Barnard's Court, treated as if the papers were perfectly regular, and on its appearing that Judge Barnard's view of the law was a different view than that entertained by the Federal Court, and that a decision was likely to be had there, whereby that general matter of proceeding would be held to be totally void from want of jurisdiction, then Judge Barnard woke up and alleged, for the first time, that no bond had been presented. In reply to that three affidavits were offered in this case in the Federal Court, one by Mr. Tracy, one by Mr. William Fullerton, and one by Charles Edward Tracy, proving the fact to the complete satisfaction of the court that such a bond was tendered according to law to Judge Barnard. I don't undertake to say what Judge Barnard did say in Court, but the fact that he was reported in the regular newspaper reports of the action in this case to have denied that such a bond was ever tendered to him, is a fact not only pertinent but important to this investigation, and I ask the ques-

tion, therefore, and leave the Committee to decide whether it shall be asked.

Mr. HILL :

It is the first time I ever learned that there was a regular newspaper report of suits decided in Court.

Mr. ANDREWS :

Written by same counsel in the case.

By Mr. TILDEN :

Q. Will you state what was the occasion for putting in these affidavits? A. It was the fact that Judge Barnard's public announcement, which was then quite recent, tended to throw doubt on there ever having been a bond there, and the affidavits were prepared with the expectation that some evidence would be given that there was no bond found in the papers, and hence Mr. Fullerton and myself and the other deponent prepared those affidavits very carefully, and they were read in the Circuit Court of the United States, and then no answering affidavits were read in reply to them, simply the fact of their having been heard and the response to them, and the matter ended in that way.

Q. On the hearing in the United States Court no evidence was offered on the part of the plaintiff disputing the fact of this bond having been duly tendered? A. No, sir; none was ever offered anywhere.

Mr. CURTIS :

What does this tend to show ?

Mr. TILDEN :

It tends to show the history of the case.

Mr. CURTIS :

Is it your idea that it tends to show the fact that Judge Barnard made a false statement in regard to the bond ?

Mr. TILDEN :

The statement will go for what it is worth. I don't undertake to judge Judge Barnard in regard to that. It is simply the fact that, after the case had proceeded eight months, precisely as if the bond had been there, and results that Judge Barnard didn't anticipate were coming about, then Judge Barnard wakes up in aid of the broken-down case as it stood, and volunteers this allegation from the bench.

Mr. HILL :

Where is the proof that he made that statement? I regard that as a pretty important statement, if he made such a statement. It ought to be proved by some evidence that satisfies us as jurors, or as men conducting the investigation, that he did make such a statement.

Mr. TILDEN :

All I seek to develop is the fact that such a statement appeared in the evidence under the head of reports of proceedings in his Court, purporting to be a statement made by him in open Court.

Mr. HILL :

In the first place, the newspapers are not produced, and I don't think they are evidence if they were produced.

Mr. TILDEN :

This is a fact perfectly pertinent to this case, and the anxiety to keep it out illustrates how important it is.

Q. Was there a publication purporting to be a report of what was said by Judge Barnard in Court, denying that such a bond had ever been presented ?

Mr. ANDREWS :

I suggest that that is the same question in substance.

The CHAIRMAN :

Under the rules of the Committee no objections were to be heard from counsel on either side. They have been heard where no bad results were attained, but the results of the last few minutes show the bad effects of it.

Mr. TILDEN :

The counsel has no right to put questions to the Committee. I ask to have that question answered.

By Mr. FLAMMER :

Q. In what connection were those affidavits in the Circuit Court of the United States read ? A. They were read in the Circuit Court of the United States on a motion there to dissolve the injunction in this case, and were so prepared and presented there to meet the allegation which had come to us through the newspapers of Judge Barnard's declaration that there was no bond in the papers.

Q. The affidavits were not presented to the Supreme Court ? A. No ; there was no question there of that kind.

Q. And there was nothing came up in the State Court after this alleged publication, was there ? A. There did things come up.

Q. Were those affidavits presented then ? A. It came up in the Supreme Court in this way. That question may not have been there, but there were proceedings after an order of removal made by Judge Rosekrans in that case, and an order made by Judge Rosekrans in another case. There were proceedings in Judge Barnard's Court that I did not attend, on the ground that I didn't regard the case as there, and I suppose it was among these proceedings that this announcement was made. He set aside two orders of Judge Rosekrans for removal, and one or two orders on appeal, and he granted an order to show

cause so that he acted judicially on some three or four occasions, long after this decision, and then it was that it came to my ears that those suggestions were made, and then I turned round to look it up.

Q. This publication, about which this question was asked, was this after the decision rendered by Judge Barnard, or before? A. Long after; his decision contained nothing on that subject affecting the papers whatever.

[The Committee, after consultation, decided that the question put by Mr. Tilden to the witness should be answered.]

Q. Was there a publication purporting to be a report of what was said by Judge Barnard in Court, denying that such a bond had ever been presented? A. There was.

Q. Was the question argued before Mr. Justice Blatchford, and subsequently argued before Mr. Justice Nelson and Judge Blatchford, sitting together at the Circuit Court? A. It was; it came before Judge Nelson and Judge Blatchford sitting together, on the grand motion to dissolve the injunction in the Federal Court, whether or not the case had been properly removed; that motion was opened so far as this—I read all the papers on our part; and got the information before the Court, and Mr. Field put in such affidavits as he chose; I think there was very little on the other side, and then the argument commenced, and Mr. Seward opened our view about the matter; the arrangement was, that Mr. Seward should make the opening argument, and before he got through with it Judge Nelson stopped him and called up the counsel on the other side to some question in the case, and the counsel commenced answering it, and there was a sort of colloquy going on between him and Judge Nelson, and the hour of adjournment arrived, and the motion was adjourned over, I think, two days on account of the Judge's illness, and during that interim he met with an accident and got hurt, and he was not well enough to resume the motion for many months; and both sides went to Coopers-town to argue it, and I went there, and he could not hear it, and after he got well he came to Court in New York, took the motion and heard it, and decision was rendered.

Q. Was the removal of this suit to the Federal Court ever after acquiesced in by the plaintiff? A. Perfectly so, after the final decision of Judge Nelson.

Q. Didn't any controversy in this case, so far as the State Court is concerned, totally cease? A. It did; the removal was held by Judge Nelson to have been perfected when all the papers were presented in the Supreme Court on the first Monday of August, 1868, and the removal was effected from that time; that was his decision, and the case went on in the Federal Court, and he declared and filed his bill, and the case was landed there, and it is out of my hands.

By Mr. NILES:

Q. Do you know anything about this \$50,000 that was alleged to have been paid to Judge Fullerton? A. I have no knowledge on that

subject; perhaps I deal in construction a little; I have no personal knowledge of any money going into Judge Fullerton's hands, if that is an answer.

By Mr. HILL:

Q. Did you see anything in the newspapers in reference to it? A. I don't think I ever knew it, or I should have known it in that way; I can state some anterior circumstances that I do know, that I was personally witness to; I can tell you what I know about an anterior thing; it is, perhaps, not a fair answer for me to say I know nothing about it; at one time during this litigation, when the storm was going on pretty hard in the Supreme Court, it was suggested somehow or other to Mr. Fullerton that probably Mr. Fisk could be settled with for \$50,000.

By Mr. CURTIS:

Q. Suggested by Mr. Fullerton? A. To him, and Mr. Fullerton came to me with the suggestion, or to some of the gentlemen, that he thought from something he heard that \$50,000 would settle with Mr. Fisk; there was then a meeting of the Executive Committee, I think, at Mr. Cisco's office, at which I was present, and Mr. Fullerton was called in, and the President of the Company and others, who were in a hurry to take the steamboat to go to Boston, and after consideration it was agreed that Mr. Fullerton might see whether Mr. Fisk would take \$50,000 to settle the thing, and if he would, that the \$50,000 should be furnished from the Treasury for that purpose, and Mr. Bushnell saying it was all right; I am not positively certain, but I think that my name was associated with Mr. Bushnell about it, although I was not a director, that I should see the settlement was effectual, and then the money should come; that ended it; the gentlemen went to Boston, and a day or two following, Mr. Fullerton came to me and said he found he could do nothing with it, that he got information that he could not settle with Mr. Fisk at all; that ended it; as far as that I have knowledge; further than that I don't know.

Judge BARNARD:

Let us have the guessing.

By Mr. NILES:

Q. Have you any knowledge whatever that any of that money ever went to Judge Barnard? A. That \$50,000 matter that I was speaking of to settle the case with Mr. Fisk, that thing entirely ended there. I know, because I was conferred with about it, and that ended it. If there was any \$50,000 transaction it was an independent, new affair, and what it was I don't know.

By the CHAIRMAN:

Q. Do you know of any \$50,000 ever having been paid? A. I know nothing about it, as knowledge, what was paid.

By Mr. NILES:

Q. Do you know any fact indicating that any money was to go, or ever did go, to Judge Barnard, out of the \$50,000, or any other sum?

A. I can't say that I know any fact on that subject. I can tell you that I learned that there was a complaint in the Company that \$50,000 had gone out of its treasury; I learned that fact.

Q. Do you know any fact indicative that it ever went, or where it was going? A. I don't know where it went; I had not the slightest information on that point. I did learn of the fact of the \$50,000 going out of the Company, for the matter was talked of among the directors that \$50,000 got out of the fund and some one got it, and the assistant treasurer was called up in my presence and asked about it, and from him I learned that \$50,000 had gone out of the treasury by direction of Mr. Bushnell into the hands of Mr. Fullerton. That was stated to these gentlemen in my presence by the assistant treasurer.

By Mr. CURTIS:

Q. That \$50,000 had been paid out of the Company to Mr. Fullerton? A. By Mr. Bushnell.

Q. That was stated in your presence? A. Yes, sir; they called him in and said: "Let us know about it." There was some excitement among the directors about it, and I was very happy to have them free my name from the imputation of having anything to do with anything of the kind.

Q. When that was stated, was it stated why it was paid to Mr. Fullerton? A. No, sir; he didn't. He said, "I understood the Committee allowed me to pay out this \$50,000 to Mr. Fullerton whenever Mr. Bushnell gave me the word, and I did it, and I supposed it was all right, and what it was, for I knew nothing about it at all."

Q. Did you hear no suggestion or any ground on which Mr. Fullerton had asked for or received that money? A. The sub-treasurer was talked to on the subject. When he came in they asked him about it, and he said it was so; Mr. Bushnell also said something about it, as if he knew. On another occasion Mr. Bushnell was in, and he said: "How about that \$50,000, Mr. Bushnell?" and he said: "It is all right."

Q. In what relation did Mr. Fullerton stand to the matter? A. I have told you all I know. He was one of the counsel for the Company. He was acting with us in that litigation.

Q. Did you understand that this \$50,000 was entirely outside from any fee that was due to him? A. I did understand that it was not for a fee. There was no suggestion that it was for a fee at all, nothing of that kind; and I assume it was not from the mode in which they spoke about it. It was not a fee to Mr. Fullerton. I saw the gentlemen were all paid their proper fees as we went along.

Q. Did any one ever suggest, in your presence, that Mr. Fullerton had probably made use of any part of that money to compensate or to pay Judge Barnard in any way for standing still or holding his hand? A. I don't think that any suggestion of that kind was ever

made by any member of the Company to me. I have heard questions asked, but no question in fact. It was a set of men that wanted to know, and could not find out. All the information that came to me was that the money went over the counter into Mr. Fullerton's hands by Mr. Bushnell's clerk, which was confirmed by Mr. Bushnell, but beyond that it was merely asking questions.

Q. You were counsel for the Company at that time? A. Yes, sir.

Q. Standing counsel? A. Yes, sir.

Q. And Mr. Fullerton was associated with you in this suit? A. Yes, sir.

Q. Did you ever ask Mr. Fullerton about it? A. I did not. I never did ask him a word about it. I saw he got into a pretty good snarl with the directors before I met him, and as I met him afterwards, I remarked that he did get into a pretty grand row with the Committee, and he said yes, but I didn't penetrate the matter. It was none of my business to put Mr. Fullerton on trial.

Q. These gentlemen were associated with you as counsel of the Company? A. Yes, sir.

Q. And you understood from an officer of the Company that \$50,000 was paid to him, not as a fee? A. I did.

Q. You never asked him for any reason about it? A. I never did, because of this misconcert among the directors, and this inquiry was going on, and I did not want to be the man to charge Mr. Fullerton with anything.

Q. And you didn't have any conversation with him in regard to it? A. Not a word.

Q. You avoided it? A. He didn't bring it forward, and I didn't bring it forward. It was a kind of thing that no one would want to meddle with unnecessarily.

Q. Do you know of any fact occurring in the history of that suit, of Fisk vs. The Union Pacific R. R. Co., that has any tendency to show that there was any complicity between Fisk and Judge Barnard? A. Yes, sir; I think I do.

Q. What? A. I think the course of this judicial proceeding indicated such complicity.

Q. You infer that, then, from the general course of things, the nature of the orders that were granted, and the general character of the proceedings; is that it? A. I infer it from those orders and proceedings, with the general surroundings of the thing. You asked me for my inference; that is my inference; I cannot say I know, because I don't think I ever saw the two persons together, except when one of them was in Court.

Q. Do you know of any fact which shows that there was any complicity between them, aside from the general course of the litigation and the tendency, and the nature of the orders, and so on? A. As to any external, direct fact, external to the litigation and to the course of proceedings, and the general progress of the proceedings, I have no knowledge.

Q. Is it the state of your mind now, on the subject, that you be-

lieve there was complicity between Fisk and Judge Barnard in respect to that matter? A. Yes, sir; it is.

Q. And that is derived from what? A. It is derived from the general facts of the case as appeared by the course of litigation, and the friendship and familiarity which existed between the two gentlemen, and the occurrence of other litigations involving the same injunctions, and a good deal of the same style of proceedings.

Q. Now, as regards what you call the friendship between the two gentlemen, what do you know on that subject? A. I don't know it from seeing them together, but I know it as I know the friendship of persons that are notoriously friends, and spoken of in that way.

Q. You know it, then, only from public rumor; is that it? A. Yes, sir.

Q. Then, assuming one fact on public rumor to be true, and connecting that with the general character of the orders, and what you, as counsel for the Company, regard as improper proceedings, your mind is in that condition of belief, is it? A. From those circumstances, and my knowledge of the character of Fisk, of his capacity, of his general tendencies, of his artful method of consulting and securing friends; all those circumstances must be put in to make up that impression.

Q. What do you know of the character of Mr. Fisk? A. I know very well what he was, because I met the man more than once. I have seen him on some of his railroad raids. I was present at the Albany and Susquehanna litigation. I have encountered him in a great variety of ways. I knew him before this thing occurred, when he was a very active, energetic, well-esteemed broker in town here, and at the time of those subscriptions—I knew him then, and I have met him frequently since, and know what his reputation was, and what his life was, as any man must know that knows anything.

Q. Can you give me any other ground or reason than that which you have stated for believing that there was complicity between Mr. Fisk and Judge Barnard in this litigation? A. I don't now think of any other than such as I have indicated in this answer.

Q. Do you know how many times after Judge Barnard had directed the books of the company and the safe to be opened, the direction was refused to be submitted to? A. I don't understand any such fact to exist.

Q. Was there a motion argued in Court? A. I thought you spoke of actual physical resistance to it.

Q. Was there a motion argued in Court on that subject? A. There was a motion argued.

Q. A motion on an order to show cause? A. Yes, sir; in some form.

Q. Were you present? A. I was present, and assisted in one motion, I think, where this right to remove the matter was resisted, and was resisted partly on the ground that the case was removed, and that the whole proceeding was without jurisdiction, and that it was not according to practice that a Receiver should be furnished, with the power of

the company to take possession. That was not the practice. Receivers get possession by proceedings before a master.

Q. Did you hear an officer of the company on the stand there say to Judge Barnard, on being inquired, that he would not open the safe, and would not give the books to the Receiver? A. Not to me. I can find the notes of it, and if you will give me the name I will tell you.

Q. Was there any officer of the company examined on the stand there at that time? A. Yes, sir. Mr. Durant was Vice-President, and he was examined.

Q. Was there an officer of the company examined who said he had the combination of the lock, and he would open the safe if he saw fit?

A. I think, Mr. Ham; he had the combination.

Q. He stated that, did he? A. I know he had it.

Q. He admitted he had? A. I know he was the person that had the combination of the lock, and some other person had the key, so it took two men to get into the safe.

Q. Did you hear Mr. Ham say on the stand, in answer to a question, to Judge Barnard, that he would not furnish the combination to open the lock? A. I don't remember precisely about that; he may have said so. Mr. Ham was over in New Jersey most of the time, and during this storm stayed there, and no one could get at him. He may have said so, but I don't remember his saying he would not do it. I am not sure about that. I have no recollection about such a fact as that, but it may be so.

Q. Did you instruct the officers of the company not to open the safe? A. No, sir; they did not require any instructions upon that subject?

Q. Did they ask any advice? A. No, sir. I think not.

Q. Then they were determined not to open it? A. They didn't open it it seems.

Q. Don't you know that they were determined not to? A. I inferred that they intended not to, but they never told me. I inferred it. Mr. Ham was out of town, and the whole Board of Directors could not open the safe.

Q. Don't you know Judge Barnard was informed judicially that the officers of this Company would not obey his directions to open that safe? A. I know Judge Barnard had such information undoubtedly; that they did not open the safe, and they could not get in; and they alleged that they sent a man over for him, and he lived in New Jersey, and he came over about his business, but he didn't come over those days, and the safe was not opened; I inferred the man kept away on his own notion, to prevent it being opened.

Q. The man was an officer of the Company? A. Yes, sir; I inferred that, but they didn't communicate that to me; I didn't advise him to stay away; he didn't come over, I recollect, one day, he was sick but afterwards he stayed away on purpose, so that the safe would not be opened.

By Mr. CURTIS:

Q. Suppose an officer of the Company, who is appointed by law to

obey orders, has repeatedly refused to do so in the matter of opening safes and delivering up books, I want you to tell me what a Judge is to do under such circumstances. Is he to allow the law to be treated with contempt? A. His business was to desist from his continuous illegal attempt to pursue that Company by unlawful proceedings; he had no jurisdiction over it at all; it was not in his Court; there was no practice known to civilized jurisprudence that countenanced the style in which he carried on the thing; It was entirely novel to any judicial practice to have such things done; it was a perfect right of those people to resist by force; I so advised them, and I so advised them fully that they had a right to resist, but they preferred not to resist, so the officers went on with the tools, and broke in; it was a trespass, not the slightest doubt about its being a trespass at the time on the part of every person concerned in it; of course a Judge is not guilty of trespass, but I considered it an outrage and a trespass, and called the men to their faces a set of burglars when they were at work on the safe.

Q. Setting aside the consideration of elements you put into the case, that the case was not in his Court, that he had not jurisdiction, assume now that the case was in his Court, I want you to tell me, as a lawyer, what a Judge is to do when his orders are disobeyed? A. If a Judge makes a lawful order and it is disobeyed, the laws of the State provide very summary and very severe redress against the offender, and it is the duty of every upright Judge to maintain the dignity of the law by enforcing those penalties.

Q. Where did that occurrence take place of Judge Barnard's remark that you made of driving one set of damned scoundrels out of town? A. I think the Judge was sitting in the North Court room that day, but I won't be certain

Q. Was he holding Court at the time? A. Yes, sir; he was on the Bench, and there was a witness sitting in the chair beside him.

Q. Did you hear the remark? A. Yes, sir.

Q. To whom was it addressed? A. I cannot say. It was thrust in by the Judge as an explanation of something he thought they were not expressing correctly.

Q. Who else was there besides yourself? A. I don't know who were there; there were other counsel there. I was never entirely alone. There were generally one or two on each side of this affair.

Q. Can you name any one that was there? A. I cannot.

Q. Can you name any officer of the Court that was there? A. No, sir; the officers were the same set we see around there.

Q. Was the Clerk of the Court there? A. No; I cannot tell you what Clerk was there.

Q. What case was it in? A. It was in this case, in some phase of it.

Q. Some part of this Fisk case? A. Yes, sir.

Q. Were Field and Shearman there? A. Can't say, but some of those people must have been there. It was not an *ex parte* thing that was going on.

Q. Did anybody ever prosecute any part of these proceedings in this case except Field and Shearman? A. There were three or four gentlemen in that firm, but Mr. David Dudley Field was usually the man to represent them on all occasions. It was usually Mr. David Dudley Field. On almost every occasion he was present, or we adjourned in case he was not there.

Q. You cannot state whether he was there or not? A. I don't recollect who was in the room at the time.

Q. What was going on at the time? A. That I cannot tell you, except this witness on the stand.

Q. Who was the witness? A. I think it was Dr. Durant. I won't be sure about it being the Doctor, but it was a witness. The fact I recollect very well. It was one of those things that I didn't regard as having much to do with the case, and I would be very glad to forget such a thing.

Q. Was there any one else in the Court room except you and the counsel on the other side? A. Undoubtedly there was. We were never without some audience, more or less.

Q. What part of the day was it in? A. That I cannot tell. Our Courts sit for about five hours a day, more or less.

Q. Whom did you first communicate it to? A. I cannot speak now of that, because it is like any other thing that happened very plainly in my hearing, and it struck my hearing at the time, and I must have spoken of it, but I don't know to whom. I have spoken of it in a great many times, but not as a piece of business.

Q. Without suggesting that there is anything unfair in your testimony, can you not assist us to verify the facts? A. I have no doubt I can find the people that were there, and that will answer it, but I am not getting up this case. I have no doubt it is recollected by other persons, because it is a sort of thing that would not be forgotten.

Q. Can you not give us some person? A. I cannot do so now. What I can find at home I don't know anything about.

Q. No one excepting the two Mr. Fields, father and son, or Mr. Shearman, have appeared in this case, did they, for the plaintiff? A. I don't know but Mr. Sterling came in, and Mr. Schomp, and Mr. Ensign; all those gentlemen were active. There was a great deal of work to be done in this litigation, and the presence of one or more of the clerks, beside the principal was very common.

By Mr. TILDEN:

Q. Did Mr. Tilden come into this litigation on or about the time of the injunction on the 10th of March? A. Yes, sir.

Q. And not before? A. No, sir; Mr. Tilden's first appearance in the case was about that time.

Q. Mr. Tilden had no connection with it prior to that time? A. I think the injunction was served prior to his being called in.

By Mr. HILL:

Q. Is he counsel still in the case? A. That I don't know; I am out of the case. When we had the last argument, I merely observed

the fact that it was going on, but I was not present at the argument.

Q. Were your counsel in the Albany and Susquehanna law suit?

A. Yes, sir.

By Mr. CURTIS :

Q. Were you opposed to Mr. Fisk in the Erie stock case? A. I was in the case of Ramsey *vs.* The Erie Railway Co., and Fisk *vs.* Ramsey.

Q. Did you state that Judge Barnard had granted any order in the Rock Island and Chicago case? A. I have not been examined about that to-day. I was in that case. Judge Barnard did grant a few orders in that case, but very few. Judge Cardozo had that case. My impression is that Judge Barnard did make two or or three orders in that case, and then relinquished it, and would not have it before him, and then it remained before Judge Cardozo until the end.

Adjourned until eight o'clock, P. M.

EVENING SESSION.

March 19, 1872.

Judge BARNARD :

I am desirous of making this admission : That all these telegraphic dispatches which have purported to have been sent to, and received by me, I admit ; but I do not admit that Mr. Coleman ever sent one to me, and I do not admit that I ever went to the telegraph office in Poughkeepsie myself, in person. That being my signature to the original dispatch presented to me the other day, I would say that I sent that by a negro servant from my mother's house to the office. Nor do I admit that in that dispatch the name of James Fisk, Jr., ever appeared, or his pass.

The CHAIRMAN :

You allude to the four dispatches which have been introduced.

Mr. PARSONS :

You remember, Judge, that one dispatch to which was attached the name of Mr. Coleman is admitted to have been sent by him, in which he made inquiries as to the health of your mother.

Judge BARNARD :

Yes, that was sent by him. The others were never sent by him, and he was not in the city at the time.

William ORTON :

Direct-examination resumed by Mr. Parsons.

WITNESS :

I solicited permission from the Chairman on the morning following my previous examination to correct a statement made by me, to the effect that the demand made upon the company to produce certain messages was made upon some other officer of the Company than myself. On returning to my office and pursuing the investigation there for the purpose of more completely establishing the fact, that I had assumed to be the fact when I was here, that the messages of that date in our custody had been destroyed, my private secretary and stenographer reminded me that I had dictated to him a letter directed to Judge Barnard himself relating to this matter, and he produced from the files of my correspondence a press copy of that letter, dated on the 12th of August, in which I enclosed to him a copy of the messages covered by the requisition, which was from a Mr. Lawton, Referee in some case at Albany; but I preserved no press copy of the sheet containing the messages, although I did preserve a copy of the letter to Judge Barnard, which was to notify him that such an order had been made upon us, and to know if it would be agreeable to him that they should be produced. I do not find on my files any reply from Judge Barnard to that letter, and it is proper I should here state that I have not any acquaintance with Judge Barnard, and am not aware that I ever spoke to him, and this was a mere courtesy to a customer; but I ascertained that subsequently these messages were produced at Albany and copies permitted to be taken in the case. The originals were returned to the files, and to the best of my knowledge these files have been destroyed substantially as I have previously stated. That is the explanation that I desired to make. (Judge Barnard's counsel not being present, Mr. Parsons inquired if they should proceed, or wait until the counsel arrived.)

JUDGE BARNARD :

Proceed, certainly—I am abundantly able to take charge of my side. I will say this one thing to you and the members of the Committee who are here, (and I am sorry they are not all present.) That I have only made this fight for the purpose of preventing my being put on trial for stealing; anything else that I may have done, I think it is a proper subject for the Legislature to inquire into, but when they charge me with stealing, I want to see what evidence can be produced against me.

Examination of Mr. ORTON, resumed by Mr. STICKNEY :

Q. Mr. Orton, is there not kept in your office besides telegrams and press copies of telegrams, a record of all telegrams sent or received?
A. In detail? No, sir.

Q. No such record is kept? A. I cannot speak for all the offices, but I will say there is not in the large offices. If you allow me to explain the process. You hand me a message to the Receiver at the office; his first act is to compute the tolls on it, at the rate prescribed

by the Company ; he enters more tolls on a numbered sheet, headed with the day of the month. If it is number 25, against 25 he enters \$1.75. He has at hand a percussion stamp that represents him, and his money drawer, marked A, if you please. He stamps the message and in the blank space of that stamp is inserted \$1.75. It is a percussion stamp with the date, stamping them consecutively. In that stamp he puts \$1.75 ; the message is immediately put into a little leather case and tossed to the boy who attends a pneumatic tube, and sent to the bureau. The message goes on the following day to the clerk in charge of the messages who makes up the account against that Receiver from the message itself, and calls upon him for the amount of money which is in his hands, which he gives with the numbered sheet to the cashier ; that is the plan pursued in our principal offices. Now what would be the case in the Poughkeepsie office I am not prepared to say, but it is not a necessary part of the process of conducting our business to keep a record that shall exhibit the fact, after these records are sent to the mill to be destroyed, that Mr. A. on a certain day sent a message to Mr. B. at all.

Q. Do you keep those lists? A. No, sir ; we have no occasion to keep them beyond the day on which the account is settled ; they are not a part of the record.

Q. For how long a period do you keep the delivery books, in which messages delivered are receipted for by the party who receives them? A. There is no fixed rule as to that : it is our convenience that governs in part. These records accumulate rapidly and we have found by experience that it was desirable to keep them for a space of two years, but three months more or less is governed by convenience. These things are of no further use to us, and being of some value as material for the manufacture of paper, they are disposed of, not by miscellaneous sale, but generally by direct disposition to some mill, and destroyed.

Q. Can you state whether or not the delivery books for the city offices, for the month of August 1869, have been destroyed? A. I have made no special examination with reference to that fact.

Q. In the case of a message coming from Poughkeepsie, directed to 359 W. 23rd Street, I understand that the process would be somewhat as follows : that the message would be transmitted from there to your general office, and from there transmitted by telegraph to some of the minor offices ; am I right in that? A. You are correct.

Q. Would it be delivered from the minor office? A. Yes, sir.

Judge BARNARD :

Q. Do you recollect writing me a letter, which was presented to me on the Bench asking my permission to have all these telegraphic despatches published? A. I have just made a statement that I wrote a letter to you.

Q. And what was the answer? A. I do not remember.

Q. Was it in writing? A. I do not remember that I received any

reply to that letter at all. I found none in my record, and as the fact that I had written such a letter escaped my recollection, it is not strange that I failed to remember whether any reply was sent.

Q. Is it your custom under any circumstances to publish a dispatch, unless you get the consent of the man by whom the dispatch is sent or by whom it is received under an order of the Court? A. It is not our practice to publish private dispatches under any circumstances. It is our practice in respect of the orders of the Court for the production of messages, to throw around the business all proper safeguards for the protection of the confidences intrusted to us; but a very considerable experience in that department has taught us that we have no power to resist the process of a Court that directs the production of a message. We object and delay, and sometimes, as in the case to which you refer, we apply to the parties themselves to know if they have any objection to the production of the message. Now in this case I am unable to remember whether you returned any answer to the communication or not. I probably know, from having ascertained the fact, that it was subsequently decided to obey that order of the Court, especially as the messages covered by its requisition, as I find by a memorandum I have before me now, related to domestic affairs.

Q. Have you no idea who the man was that came to me on the Bench, if any one ever did come, and asked my permission to publish these things? A. Nobody ever came from me with such a request. Mine was a communication to you, stating the fact that an order had been served upon us to produce the original messages passing between yourself and somebody else, who I do not now remember—on a certain day; I stated to you in that letter that I enclosed copies of these messages; I did not take a press copy of the sheet that contained copies of the message; so that I am not at this moment able to state what were the contents. But I sent a message, the original of which I now hold in my hand, addressed on August 12, 1869, to the person who went from Poughkeepsie to Albany, in obedience to the process, with the originals in his possession. It states as follows: "You may safely state that the messages are wholly personal and private, and relate in part to domestic affliction, and have nothing whatever to do with the railroad litigation now pending."

Q. Have you any recollection of Judge Barnard's stating, or did he report to you that Judge Barnard said that he had not the slightest objection to have them all published? A. I am unable to recall what, if any, answer was returned.

Q. Would you have published this dispatch unless you had received such an order from Judge Barnard? A. Your question intimates that we did publish them; we are not responsible for their ultimate publication.

Q. Would you have given them up? A. We should. Now it is but common justice, if the Committee will allow me, to say that the only case within my recollection where we have gone to Court (as we have done hundreds of times) in obedience to the processes of the

Court, with original messages in our custody, to protest in decorous language against being compelled to disclose the confidences reposed in us—the only case in my recollection where that protest was regarded was a case in which the process was issued from Judge Barnard's Court, and in obedience to that process a special messenger was sent with the original messages covered by the process. The messenger discharged his duty by making a respectful protest, and declining to answer any question of counsel touching what was contained in the messages. He handed the messages to the Court, whereupon Judge Barnard, as it was reported to me, directed the clerk to make copies of the messages and to return the originals to our office, and he commended the messenger for the care which he had taken, and stated that he would decide thereafter whether he would permit the contents of the messages to become a part of the case or not.

Q. Judge Barnard do you mean? A. Judge Barnard was the gentleman. That was the only exception I remember where any Court regarded the protest, which it is our uniform practice to make.

Q. Was it reported to you that he wanted to keep the originals for his own protection? A. I am unable to recollect anything connected with it.

Q. Will you give the name of the man who conveyed the message to Judge Barnard on the Bench? A. I am not able to remember, among the numerous messengers sent by us, who made that statement. Since you made the statement, whether it is by the making of the statement, or whether it is because it was a fact at the time, my recollection sums up something to the effect that an oral answer was returned, expressing assent to their production; but I should not like to state that positively.

Q. Have you any recollection whether this answer was given in open Court, or on the street, or in a private house? A. I do not recollect; if it is proper to answer as to my recollection, I should say that, having my recollection revived by this conversation, it was my impression that the letter was delivered to you on the Bench.

By Mr. STICKNEY :

Q. There is one point for which we have called you particularly. Has there been any discussion among the officers of the Western Union Telegraph Company as to removing their general office from New York city, at any time? A. There has been.

Q. When was that? A. It is my impression it was some time in the fall of 1869.

Q. Was this discussed at a meeting of the Board of Directors? A. No, sir.

Q. Was a discussion had among the Directors individually or otherwise? A. I am unable to recall distinctly the circumstances under which the matter arose; it is my impression, however, that it was a conversation among the executive officers of the company, perhaps in connection with a meeting of the executive committee of the company. It was not a part of any official action of the company—that is to say, as far as any called meeting of the Directors, or of the executive committee, was concerned.

Q. Will you state what this discussion was? A. A suggestion was made by some one that it would be prudent for the managers of the Company to make some provision for a contingency when, for the protection of the company's interest, it might be deemed advisable to remove the headquarters out of the city of New York.

Q. What contingency was spoken of? A. I think it was the possibility of proceedings against the company that might be deemed prejudicial to the interests of the stockholders.

Q. Proceedings of what kind? A. Legal proceedings.

Q. Was there any specific proceedings mentioned? A. I do not remember that any specific proceedings were considered or discussed.

Q. And for the protection of the company, in what contingency was it thought it might be necessary to remove the headquarters of the company. A. It is my impression that it was such a contingency as the appointment of a Receiver.

Q. Of the property of the company? A. Yes, sir.

Q. Had you any intimation that anything of that sort was contemplated, or was to be feared? A. No intimations were ever made, as far as I am aware of, that any such proceedings were contemplated.

Q. And were you aware of any state of facts which would have called for the appointment of a Receiver of the property of your company? A. Nothing in the merits of the case.

Q. Had there been any action in the Courts, and if so what, which had caused this discussion which you have mentioned? A. It is my impression that this was subsequent to the proceedings in the case of the Erie against the Albany and Susquehanna Railroad Company, and also in that of the Union Pacific Railroad; but I do not remember any special case that prompted it.

Q. What amount of property did your corporation then hold; we do not ask for an accurate statement, but the approximate figures. A. Our capital stock was about \$40,000,000, and we had bonds outstanding between four and five millions.

Q. And I suppose a large amount of property at all times in New York city? A. A very considerable amount always; we have some surplus on hand.

Q. Had you yourself given attention to the proceedings, which had taken place within the last year or two before that time, in the Courts in this city? A. What do you mean by attention?

Q. Had you thought of them and informed yourself about them? A. It was my habit then, as now, to read the daily journals, and to endeavor to be alive to whatever concerned the interests of the company with which I was then, and am now connected.

Q. Had the proceedings in the Courts been generally discussed among men with whom you mixed? A. I am not prepared to say that they had been the subject of general discussion.

Q. Well, frequent discussion? A. They had been a subject of discussion.

Q. Frequently? A. Undoubtedly more than once; but I cannot say how frequently; if I should answer that directly, I should say, not very frequently.

Q. What, as far as you know, was the opinion held as to the security of property, so far as it was affected by the proceedings in the Courts of this city? A. I do not feel competent to give a general opinion on that subject.

Q. As far as you know, what opinions were expressed?

Judge BARNARD:

You may give private opinion so far as Judge Barnard was concerned.

WITNESS:

If I am to answer that, it was my impression that as a prudent manager of the business entrusted to me, it was my duty to look about making provision for the possible contingency of being compelled to remove our office out of the city of New York, and we did make that provision. I cannot say what particular fact or thing prompted me to the course which I subsequently pursued.

Q. What was that course, and where did you make provision for the removal of your Company's office to? A. Our company controlled a very valuable charter, as we deemed it, granted by the State of New Jersey, and we considered that if we could acquire the right to remove out of the State of New York, and yet enjoy within the State all the privileges which we did then enjoy, as a corporation created by the State, it would be a prudent thing to do, and we devised a scheme for procuring the passage of a law by the Legislature, which would enable us to accomplish that result, and we did procure its passage.

Q. Would it have been an injury to the company, or detrimental in any way to its interests, for it to be compelled to remove its offices from New York city. A. It would have been inconvenient, to say the least.

Q. And to what portion of the State of New Jersey was it your intention to remove? A. There was no definite intention as to that; our charter in New Jersey was good for the whole State; probably if constrained to go there we would have selected the most convenient point in the State, reference being had to the fact that our largest business was in the State of New York.

Q. Do you mean by the most convenient point a point most convenient to New York city? A. Yes, sir; probably all things considered.

Q. Jersey city, I suppose. A. We had that point in mind.

By Judge BARNARD:

Q. As my counsel was not in before this examination was commenced, I will ask a few questions: When you say that you deemed it convenient, in view of a subsequent contingency, to remove your office, do you mean to say that Judge Barnard ever entertained any application against your office in the World? A. I mean to say, in the first instance, I simply deemed it prudent to do that; and I answer the second point by saying that nothing had ever transpired as between

Judge Barnard's Court, or other Courts in the city of New York, and the company with which I was connected, that of itself, or of themselves, rendered any such action on our part necessary.

Q. Is William G. Fargo a member of your company? A. He is not—he may be a stockholder.

Q. Was he at that time? A. I am unable to say; he was never a Director.

Q. Was John Hoey ever a Director? A. I think not.

Q. Was Chester A. Arthur ever a Director? A. No, sir.

Q. Did you ever have a reasonable apprehension or idea that Judge Barnard was going to do anything in the shape of appointing a Receiver over your company, not based upon proof but based upon suspicion? A. Nothing had ever transpired.

Q. Did you ever hear a rumor to that effect on the street? A. Nothing had ever transpired, nor had any rumor ever reached me, relating to Judge Barnard's Court or any other Court in the city of New York and the company with whom I was connected, that led me to suppose it was in contemplation by any body, in or out of the Court, to take any hostile action against our company.

Q. Do you think Judge Barnard would have taken any action whatever against your company that would have enured to his own pecuniary or corrupt benefit? A. I answer unhesitatingly, no.

By Mr. CURTIS:

Q. In this whole course of inquiry your answers have been somewhat in the dark. I fail to appreciate the nature of your apprehension in respect to your position in this city, and I want to ask you if you will state now exactly the ground on which you, as President of our important corporation, felt that corporation to be in any degree insecure under the laws of New York. I want some specific ground, if you please, for that sense of insecurity, if you felt any? A. I do not mean to be obscure or dark, any more than that it is extremely difficult to be clear and precise in respect of what was at that time merely an impression, and merely an instinct of preservation with regard to the interests with which I was concerned. I had no specific cause other than the gentlemen who discussed it had an impression that private interests were not entirely safe. It was a very simple matter for us, provided we could obtain the legislation required to make ourselves secure; and that prudence which prompts me in a morning to take my umbrella, not because I am quite sure it will rain but because it is possible that it may rain, prompted me to provide these safeguards against that possible contingency.

Q. How long did this impression, or feeling, or instinct continue to operate with your company? A. I am unable to answer that as to the time.

Q. How much was it a subject of discussion or consideration among the Directors. How many meetings were held over it? A. There was never a Director's meeting held, and it was not a matter that would be likely to be much discussed, since very considerable discussion might interfere with the result which we sought to accomplish

Q. Were any steps taken to escape from this dangerous condition of things? A. We procured the passage of a law at Albany.

Q. The passage of a law at Albany? A. Yes, sir.

Q. What occasion had you to resort to the Legislature of the State? A. Ours is a corporation created under the law of this State, and we questioned our right under these laws, as they then stood, to remove out of the State, and yet enjoy therein all the benefits and privileges of a domestic corporation.

Q. You procured such a law as that, preparatory to any necessity for going out of the State. Did you purchase any real estate anywhere else for the purpose of occupying it for your general office? A. No, we did not.

Q. Nor did you take any other step except to procure the passage of a law? A. That was all.

Q. Did this apprehension or instinct in any way affect your current pecuniary arrangements? A. Not at all, sir.

By Mr. NILES :

Q. There was some cause or other, of course, some condition of things that led you to have these fears—what was it; or was it a dream? A. My impression is that there had been some pretty serious embarrassments on the part of corporations in the State of New York, growing out of legal proceedings, that were very much discussed in the newspapers and among business men, and there was an impression—whether well founded or not—that it would be prudent for careful business men to provide a safeguard against any such contingency, when it could be done with very little trouble.

Q. Do you mean to say that there was any idea that corporations suffered for what their insolvency or their violations of duty had not justly brought upon them? A. I am certainly not competent to answer that question, because I know nothing of the merits of the cases in respect of any of the corporations that have been embarrassed.

Q. You do not get my idea precisely, I ask you of the impression (if there was an impression abroad) was that they suffered what their violations of duty had not justified; do you mean to state to the Committee that there was an impression abroad which had become settled in the community, that corporations had suffered at the hands of the Court what their own violation or neglect of duty had not justified? A. I cannot answer that question correctly; if you allow me to restate my answer to the former question, it may cover it.

Q. It does not cover it; you say there was an impression which led you as a prudent man to do a certain thing? A. Yes, sir.

Q. I want to know what that impression arose out of; whether out of the fact that corporations that violated their duties, or that were pretending to be solvent when they were insolvent, were brought to judgment for it; or whether it was that you had the impression that even though they committed no violation of duty, they were slaughtered? A. Well, sir; it was my impression that proceedings against corporations were flying round pretty thick, and that possibly we might get hit.

Q. Then you had an impression that there was a very weak spot in your corporation somewhere that might be discovered? A. Nothing of the kind; there was nothing then, nor is there now that would not bear the most abundant ventilation.

Q. What occasion, then, had you for alarm, if your corporation was sound and had been obedient to the act of its incorporation? A. I have not intended to convey the impression to the Committee that we were alarmed, because that was not the feeling. We had never been threatened, even by rumor, with any proceedings, but proceedings had been had in respect of other corporations that created some excitement in the community and we reflected that if such proceeding should be had against our company, it would be likely to injure the property and business of the company and, of course, the interests of the stockholders, which it was our duty to protect.

Q. Then it was simply the idea that if any proceedings should be taken against your corporation the excited state of the community might magnify it into a condition of insolvency? A. Well, I think, sir, that a Receiver in possession of our assets, without any regard to whether the community was excited over it or not, would make a considerable disturbance in our affairs.

Q. Now we are beginning to approach what I asked. Had you any reason to fear a receivership, while you knew that your corporation was solvent and was not violating any law? A. We had no cause to fear it, either from the fact, or from any rumor which related to the company. I think there is a legal phrase that covers the case, perhaps; it was "abundant caution."

By Mr. CURTIS:

Q. Have you any knowledge that a combination of persons made an application to any Court last year for the purpose of having a Receiver appointed over your company? A. I have not.

Q. Did you ever hear of the fact? A. I am unable to recollect at this moment any rumor of that kind.

Q. Did you ever hear that any application had been made to Judge Barnard by Mr. Osgood and others, for the purpose, and that he refused it? A. I do not think I have ever heard of it, sir; I was ill for several months last Summer, and absent from the Executive Office.

Q. You were confined to your house three or four months? A. About three months.

Q. What period of the year was it? A. I was taken sick in July, and was but little at the office until November.

Q. That was last Summer? A. Yes, sir.

By Mr. TILDEN:

Q. Will you state whether a want of confidence in the administration of justice as carried on in this city, was the real source of your apprehension? A. It is difficult for me to recollect, after the lapse of time of more than two years, and to put into precise form the motives which prompted us to take the steps which were taken, and yet I am

inclined to think that a want of confidence was one of the elements of that case.

Mr. TILDEN:

I wish to state to the Committee before another witness is called, that my attention being directed to a report of this investigation at the afternoon session, I caused a file of newspapers to be examined, and find the statement that I alluded to in the interrogatory I made. It purports to be a written statement or opinion, or whatever it may be called, read by the Clerk of Judge Barnard's Court, under his directions. I take it from the New York *Tribune* of April 9th, 1869, it is the statement I alluded to, it having been made and published in the newspapers of that time, and purports to be a written opinion or declaration read by the Clerk of Judge Barnard's Court. It can be proved I suppose by the production of the original opinion, if that is on file, but it having been spoken of to-day, or this afternoon, and finding this since the last session of the Committee I deem it my duty to inform the Committee that it is not a vague newspaper rumor, but is what purports to be a written opinion contained in two newspapers of this city, dated April 9th, 1869. This one states, "I now positively state, that not only was no bond offered to me on the 7th of August, 1868, but that no bond has ever been offered to me at any time, even to this day."

Judge BARNARD:

I cannot be responsible for what the newspapers contain any more than when they say you, Mr. Tilden, are a candidate for the Presidency of the United States.

CORNELIUS S. BUSHNELL called by the Committee, sworn, and examined by Mr. VAN COTT:

Q. Where do you reside? A. In New Haven, Connecticut.

Q. What is your connection with Union Pacific Railroad? A. I am a Director, and have been from the first.

Q. Do you remember the suit brought by Mr. Pollard against your company, and also by Mr. Fisk? A. Yes, sir.

Q. You remember the two suits? A. Yes, sir.

Q. Did you become aware of the purpose to bring either of those suits, before the suits were actually commenced? A. Yes, sir.

Q. How? A. Information from Mr. Fisk in person.

Q. Please to state what passed between you and Mr. Fisk before he commenced his suit? A. He stated to me in the vestibule of this hotel, in the summer of 1868, that he had sent a young man to Chicago to make subscriptions to the stock of the Union Pacific Railroad, and that he went down to the office here and made a claim upon Mr. Durant and Mr. Bardwell for \$3,600, which they declined to pay.

Q. And that was for what? A. For his trouble and expense in sending his young man to Chicago.

Q. The subscription having been rejected? A. Yes, sir.

Q. And that being the indemnity he sought for the loss of the subscription, or indemnity for his trouble in making the subscription?

A. No; because of its rejection. He said he made it in the interests of Mr. Durant and Mr. Bardwell, who wished to have a large subscription or a large representation of the capital stock.

Q. And this was merely an indemnity for his expense in making that subscription in their interests? A. That was it.

Q. As an agent? A. Yes, sir.

Q. Please state what Mr. Fisk further said upon that occasion? A. He said that they had declined to pay him \$3,600, and that he demanded \$75,000, and if we did not give it to him he would make it cost us millions of money.

Q. What further did he threaten? A. He threatened that he would commence a suit at once—which he did the following day.

Q. Did he tell you at that time whether he had any papers—any documents in his possession, before the commencement of that suit, in the nature of an injunction or receivership? A. I think not, at that interview.

Q. Did you see him again the next day? A. I saw him within two or three days afterwards and requested him to withdraw his suit and give it up, and I would use my best offices to get him the \$3,600, in order to save us from any more trouble. The following evening after that interview I met him in front of the office, and he told me that we had better come down with \$75,000; that if we did not, he would have a Receiver appointed the next day, for he had seen the papers all signed.

Q. Did he tell you who had signed the papers for the appointment of a Receiver? A. No, sir.

Q. Did he name the name of any Judge in that connection? A. I do not think he did.

Q. You had not at that time seen any paper in any suit? A. Oh, yes; we had been served with the papers, at the office, in that suit.

Q. What were those papers? A. They were the ordinary papers.

Q. Was there any injunction or receivership at that time? A. None at all; not at first.

Q. Merely the commencement of a suit? A. That is all.

Q. What did you do after that threat? A. The following morning, of course, I was exceedingly nervous. My associates—seven of us had assumed liabilities amounting to something between \$20,000,000 and \$30,000,000 in connection with the construction of the road—and I went to the office early and summoned a counsel to the office. I wish to say now, and let it be understood distinctly, that what transpired there was confidential, and were it not that the matter has come out in the way it has, and I feel now that it is my duty to explain it, I would never have alluded to it, because as a confidential matter I deemed it more sacred than testimony before a tribunal. Our interview there was something after this fashion: I will not attempt to give the exact words. I summoned Mr. William Fullerton to the office, and said to

him that Mr. Fisk had informed me that he had seen the papers appointing a Receiver which would ruin the seven trustees, and myself among the rest, and that we could not allow that, if it was possible to avoid it. I told him he must find the parties, whoever they were, that were responsible, and stop it at whatever cost, provided the facts were so; I asked him to go out and find whoever represented the other side and see whether the facts were so, and he came back and stated that he had learned the fact was as Mr. Fisk had stated it to me, and that he felt certain that he could avert the calamity that threatened us. I then told him that he must do it, cost what it would; he asked me what limit I would give him to avert the calamity. I told him he might go to the extent of \$50,000.

Q. What passed after that? A. I told him that I had to go to Saratoga that night, but I would leave the arrangements so that he could get the money of the Treasurer of the company on the approval of Mr. Tracy.

Q. Who was the Treasurer? A. Mr. John J. Cisco. I went to Saratoga and he telegraphed or wrote to me, I do not remember which, that he had arranged the matter and that he would need the money the following day. I telegraphed to Mr. Cisco to pay the money on the approval of Mr. Tracy. What he did with the money he must explain; I cannot do that.

Q. You learned afterwards that \$50,000 had been paid by Mr. Cisco? A. Yes, sir; to Mr. Fullerton on the approval of Mr. Tracy.

Q. What was the situation of the company at that time that required it to submit to so great a sacrifice? A. It was not so much the company as it was the seven trustees who had entered into contracts amounting to about \$60,000,000 to complete the road to its junction with the Pacific.

Q. How were the obligations to be met? A. As fast as we built the road, and got the iron on the road, and had it graded, we could issue first mortgage bonds and receive Government 6 p. ct. bonds to pay off our obligations. We had bought the iron and it was being shipped out here; we had employed several thousand men on the work of grading the road and our liabilities were perfectly enormous. The moment a Receiver was appointed our credit would be down and our liabilities would continue, while our resources would be cut off.

Q. Your ability to go on depended upon maintaining the credit of the company? A. Yes, sir.

Q. What was the credit of the company at that time; what were its bonds selling for? A. They were selling readily at 102.

Q. What effect had the appointment of a Receiver upon your credit? A. That did not come until the March following.

Q. The \$50,000 was paid; was anything more done with the Receivership then? A. Nothing; no further legal proceedings were had until the following Spring.

Q. No actual service of the papers in the Receivership. A. No; there was no further continuance at that time.

Q. That was in what month? A. In the summer June or July.

Q. State when the next movement took place? A. The next movement was in 1869, in March or the early part of March. I think possibly in February or March, when we held or proposed to hold the annual meeting for electing Directors.

Q. State what took place before that. A. Prior to the holding of our meeting Mr. Fisk again came to me and to Mr. Durant, and said that unless we paid him that \$75,000 we would find ourselves in a worse condition than he promised before. I advised strongly the payment of \$75,000.

Q. Did Fisk tell you how you were to be placed in a worse position? A. Yes; he said then, at the same time, that he would serve an injunction against our election; that he would get out an injunction against the election of Directors and would not allow us to elect a new Board of Directors, and would get a Receiver appointed.

Q. And he required as a condition of not taking these proceedings, that you should pay him \$75,000? A. Yes, sir.

Q. What was the next movement? A. We declined to pay the \$75,000, and attempted to hold our election, and we did get a little way along when the Sheriff came in and served an injunction. Some of our people were very indignant and attempted to close the door; but Mr. Fisk came with sufficient force to prevent any interference. We were all summoned, or arrested, in consequence of a little opposition on the part of one member of the Board, and the Sheriff brought us up to the Court, where we were treated very tenderly.

Q. What was done in connection with the Receivership? A. I cannot tell whether it was one, two, or three days afterwards, but it was immediately after, we were attempting to go on and transact our business; the Trustees were building the road, and all at once a very large force of officers came in and took possession of the office and safe and everything, and our young men (we had several of them) got wind of it a few minutes before, and they scattered with the bonds—several hundred thousand dollars of bonds, in every direction, and had just cleared the building before the officers got there and entered into possession.

Q. Who was the commander of the force? Was it General William M. Tweed, Jr.? A. I cannot remember; he was the Receiver there afterwards.

Q. How long did he continue there in possession as Receiver? Were you present at any of the acts subsequently committed in the office? A. Yes; I was there all through. After the arrest, and the dread of Eldridge street, where it was reported there were very large animals, most of the Directors left except myself. Having been the original person in getting up the subscription to the Union Pacific, and it being a project I was proud of, nothing but imprisonment or death would have driven me away, and I remained and stood by.

Q. Were you there when the safe was broken into? A. Yes, sir; that took two days; I was not there at the moment.

Q. It took two days to break into it? A. Yes, sir; with sledges, hammers, and chisels; it was a pretty good one.

Q. A very valuable safe? A. A very valuable and good safe.

Q. It cost how much? A. I suppose the safe itself was worth from three to five thousand dollars, but only the door was injured. The bill for repairing the door was about \$1,200.

Q. What was the pretext on which they broke into the safe? A. It was to get these bonds which the boys had spirited away so fast.

Q. They did not get them? A. They did not find any bonds.

Q. What did they find in the safe? A. They found several boxes, and some coupons that had been paid, and memoranda and papers, receipts and such things.

Q. How soon after that did the company get away to Boston? A. The friends of the company went to Washington at once and presented the facts of the case to Congress, and Congress at once or very soon passed a bill. I believe the bill went through both Houses on the same day, authorizing us to go to Boston and hold an election and establish our office there.

Q. You went there? A. Yes, sir.

Q. How many injunctions have been served on you there? A. I do not know of any.

Q. How many times has your company been placed in the hands of a Receiver there? A. Never; we have had no trouble of the kind.

Q. What was the substance of this whole proceeding against your company by Fisk and Pollard? A. The Fisk suit was in the Summer of 1868, and the Pollard was in the Spring, if I remember, as a backer of Fisk's.

Q. State what was the effect of this raid upon the credit of your company? A. When it commenced we were selling our bonds rapidly at 102—not as fast as we would like perhaps—but we could get a market for them at 102. When the Sheriff took possession of the safe, the effect was that our bonds were offered freely in the market at 60 and 65, in Wall Street, and on the floor of this house here.

Q. What was the actual loss upon your bonds, while the credit of your corporation was thus effected? A. I think the loss on first mortgage bonds which we had on hand was \$2,000,000, and on our land grant bonds it was at least \$3,000,000.

Q. Assuming that your corporation would be equally secure in Massachusetts and New York, which is the preferable place for the position of your offices? A. New York, altogether.

Q. Have you any reason for continuing in Boston instead of New York, but a feeling of insecurity attending your being in New York? A. That is all.

By Mr. FLAMMER:

Q. How do you compute your loss? A. We had \$10,000,000 of first mortgage bonds on hand, which were selling at 102. The market price was knocked down to 60 or 65.

Q. Did you keep on selling? A. We had to sell them. I would like to state in regard to the sale of these bonds that drafts were coming on from the line of road every day for 100, 200 or 500 thou-

sand dollars; I had an order laid before me almost daily from the Court, forbidding me to sell or dispose of or remove any of these bonds, but not having the fear of the law, as perhaps I ought to have had before my eyes, I would sometimes sell one hundred or five hundred thousand dollars of these bonds at from 85 to 87; we lost of the bonds some 400,000 or 500,000 which were carried off.

Q. You mean at the par value? A. Yes, sir.

Q. Was that a loss to the Company? A. A loss to the Company entirely. You see the clerks were driven away out of the office, and our auditor was driven to New Jersey so that he durst not come across the line for six weeks; he was the man that kept the register and knew where the bonds were hypothecated and where to find them. We would have 20 or 30 bonds hypothecated for a loan here and there to borrow money for building the road; you will all remember how fast we were building the road during the Summer of 1868. Every clerk and every book-keeper, and the Assistant Treasurer, and everybody connected with the office were driven away, and I did not know where the securities were, and in that manner some of the bonds were lost.

Q. Do you mean that you lost hypothecated bonds by not knowing where they were? A. Yes, sir; and bonds that the clerks had taken away—taken to various places and deposited. We were unfortunate enough not to get about \$400,000 or \$500,000, though I hope that we shall get some of them yet.

Q. And your loss upon first mortgage bonds was about one million and a half? A. Yes, and on the land grant bonds about thirty per cent.

Q. On what amount? A. On \$10,000,000.

Q. In addition to the other? A. Yes, sir.

By Mr. TILDEN:

Q. About the subscription by Mr. Fisk for two millions of stock, will you state what certified checks he tendered on payment of the 55 per cent. upon the subscription? A. He tendered the same certified checks that he had tendered over and over again before on other parties' subscriptions.

Q. Did those checks belong to him? A. No, sir.

Q. Had he any right to use them except as agent for others? A. No, sir.

Q. For whom did he make these subscriptions? A. It was Bardwell and Mr. Durant.

Q. He was a mere agent? A. Yes, sir.

By Mr. NILES:

Q. Then the subscriptions were really made as a cover, so that they might seem to retain the controlling interest? A. Yes; the charter called for the full amount of the subscription-par of the stock. Instead of that he only tendered 55 per cent., knowing that orders had been given by the President to the Treasurer not to receive any less than par.

Q. Have you ever called on Judge Fullerton to account for that \$50,000? A. No, sir.

Q. Why not, if you understood it was to be paid over to Fisk in settlement? A. To Fisk—not at all—that was not the understanding.

Q. What was the understanding as to where the \$50,000 was to go? A. I did not deem it my duty to inquire where he could buy our peace, but he was to buy it from some one that had the power—whether it was paid to be divided and part of it to go to some Judge, or to Fisk, or to any business man I do not know; it was given to buy our peace.

Q. You did not have peace? A. We secured our peace for eight months; then we were in a situation that we were beyond the possibility of being ruined.

Q. I understood you to say that you learned from Mr. Fullerton that he could settle this claim of Fisk's of \$75,000 for \$50,000? A. No; I knew that Fisk would not take less than \$75,000; he told me the night before that he would not take one mill off the \$75,000, and that I need not come near him.

Q. All you expected was peace for a time? A. That was all; that is all I hoped for.

Q. Was anything said for how long a time? A. No; the time was not named, but I named to Mr. Fullerton that we must have time until we laid the iron and were able to get our bonds, so as to be able to liquidate our liabilities.

Q. He reported that some way or other, through some persons or other, he could secure your peace for some period? A. Yes, sir; we knew that we were not to have peace; when the war finally came, because one of our Directors chanced to be at the Astor House and was notified; we had fair notice that we were to be driven out of the city.

Q. What was that notice? A. Mr. Frank P. Blair told us that in the lunch-room of the Astor House, Judge Barnard had notified him that he had driven the Erie Directors out of the city, and he was going to drive us out; that he thought we were damned scoundrels. He got a wrong impression of us, I think.

Mr. CURTIS :

Does the Committee receive this as testimony—that Mr. Blair told the witness as coming from Judge Barnard?

The CHAIRMAN :

It does not prove anything. It merely proves the fact that Blair said so to the witness.

Judge BARNARD :

I shall get Mr. Blair and prove that he never said so.

WITNESS :

Mr. Blair told me so.

Mr. VAN COTT:

I think the evidence perfectly competent as a notification to the Committee to call Senator Blair.

Mr. CURTIS:

Q. Have you any knowledge or means of knowledge what became of that \$50,000? A. No, sir.

Q. And do you mean to be understood to testify that you never made any inquiry? A. Nothing more than what I have given you.

Q. You never asked Mr. Fullerton how he had bought your peace? A. No, sir.

Q. Or who he had paid for your peace? A. No, sir.

Q. Or what had become of any portion of the money? A. Never; I was perfectly satisfied to have peace at that cost, without any inquiry. I never should have brought it out had it not come out as it did to-day, and I deemed it my duty, under the circumstances, to explain it.

Q. How did it come out to-day? A. The President of our company notified me that he had alluded to it in his testimony; he stated how he had alluded to it, and therefore I felt it was my duty to explain it that it may take its natural course. I supposed that you would summon Mr. Fullerton to explain what he had done with the money.

Q. Had you any reason to suppose that any part of the money was paid to any judge? A. I had nothing to do with that; I was never notified that it went to any judge, or where it went to.

Q. Then you can offer no explanation beyond the fact that you placed \$50,000 in the hands of William Fullerton, to be used in buying your peace? A. That is all.

Q. In respect to the threatened proceeding by James Fisk, Jr., is that all the explanation you can make of that transaction? A. I have explained it as fully as I can.

Q. Were you ever before engaged in any transaction of that nature? A. No, sir.

Q. Have you been since? A. No, sir; it was a serious occasion that would call for any such consent upon my part as parting with \$50,000.

Q. At the time when this occurred, were the Directors personally interested in the price or market value of the bonds? A. Of course; they were largely interested in the company and in the contracts.

Q. What return did the Directors get when the whole matter was completed, on the payment of the drafts for construction and the negotiation of the bonds, the drawback? A. I do not know that you can put it in the shape of a drawback; the Directors were largely interested in the contracts for the construction of the road, and the profits realized on building the road; but they were not so interested until they got the consent of every stockholder, and it was so notified on the certificate of every stockholder.

Q. They were largely interested? A. Yes, sir.

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Q. They were largely interested? A. Yes, sir.

Q. What was the *Credit Mobilier*? A. It was a corporation charter by the State of Pennsylvania to take an assignment of the first 100 miles of contract from Mr. Hoxie.

Q. What had that to do with the negotiation of the bonds of the company? A. Nothing.

Q. They were simply a separate concern that undertook to build a certain portion of the road? A. Yes, sir; they furnished the capital and took an assignment and built the first part of the road.

Q. With regard to this proceeding that took place against the company in the following Spring—that is in March, 1869, was Mr. Fullerton a counsel for the company? A. He was one of the counsel.

Q. Was he intrusted with a material and important duty in the defence against that proceeding? A. I do not think he took so active a part as some others; we had nearly all the counsel in the city, and did not require his services so much.

Q. You did not rely upon him much then? A. Well, yes; we relied upon him—we relied upon them all; they all did their best, but they did not save us.

Q. How was it with reference to Mr. Fullerton; did you rely much upon him at that time? A. Just the same, I think, as we did upon all the rest, each one from time to time; we tried the best qualities of each of our different counsel.

Q. I forgot to ask you, in connection with the matter of the \$50,000, if that had anything to do with the fees that were due to Mr. Fullerton? A. Not a cent.

Q. It was entirely independent of any compensation to him? A. As I understood it.

By Judge BARNARD:

Q. Was Mr. Tilden at that time one of the paid counsel? A. At which time.

Q. At the time this money was paid to Judge Fullerton for the purpose of buying your peace; or was he eight months previous to that time? A. I think not.

Q. Who did you talk with, before you came in here, in regard to your testimony, if to anybody? A. Mr. Clarke spoke to me to-day.

Q. Anybody else? A. Yes, sir; there were four gentlemen—three sitting with myself in the drinking saloon here—Mr. Clarke, Mr. Dillon and Mr. Van Cott.

Q. Did not Mr. Stickney and Mr. Tilden talk to you this afternoon about this case? A. No, sir.

Q. You know Thomas C. Durant? A. Yes, sir; he was at one time vice-president of the road.

Q. Do you know of his having any conversation with Samuel J. Tilden within the last three or four days, in regard to the testimony that should be given against Judge Barnard? A. I have not seen Mr. Durant for several days; he is sick, at North Creek.

By Mr. TILDEN:

Q. I want to ask you one question; are you not mistaken in the im-

pression that Mr. Fullerton took any part in the argument or consultation over the injunction of 10th of March? A. I cannot tell what part was taken in the consultation or the argument; but apart from that, I am very confident that I consulted Mr. Fullerton in March, during the controversy.

Q. You do not know that he argued any of the cases? A. No, I do not know what transpired in Court.

Mr. VAN COTT:

Q. Did you hear the name of James H. Coleman mentioned in connection with any use of that \$50,000? A. I cannot swear.

By Mr. HILL:

Q. Have you any personal knowledge in reference to the subscription books—did you have charge of them? A. Yes, I originally got the subscription up—the largest part of it.

Q. To whom did Fisk tender these checks for the subscription? A. He tendered them to the Treasurer or Assistant Treasurer of the company at the office.

Q. They were declined upon the ground that there should be a larger payment? A. Yes, sir; a full payment.

Q. That was the ground on which they were declined? A. Yes, sir.

By Judge BARNARD:

Q. Do you know Rufus F. Hatch? A. Yes, sir.

Q. And A. A. Selover? A. Yes, sir.

Q. Did you ever have a conversation with them within the last three years in regard to Judge Barnard, in connection with this matter? A. I do not know that I did.

Q. Think whether you ever did? A. It is possible for me, but I do not recollect it.

Q. Did you ever say to Rufus F. Hatch or to A. A. Selover that Judge Barnard ought to be hanged, and that you would spend every dollar you had to impeach him? A. Oh, no, my dear sir; no.

DANIEL PRATT called by the Committee, sworn.

Examined by Mr. VAN COTT:

Q. For how many years were you one of the Justices of the Supreme Court of this State? A. Twelve and a half.

Q. You are now a practicing lawyer? A. Yes, sir.

Q. Residing where? A. In Syracuse.

Q. You are somewhat acquainted with the public men of the State? A. I am somewhat—perhaps not so much as many other men of my age.

Q. Have you had occasion at the bar and among public men of the State to speak of and to consider the course of the administration of justice in the city of New York? A. I have heard it spoken of.

Q. Frequently? A. Yes, sir, quite frequently.

Q. Will you state to the Committee what is the prevalent opinion in the part of the State where you reside, at the bar and among prominent men of the State, as to the course of the administration of justice in the city of New York? A. That is a very general question.

Q. It is a general question, and you may answer it in your own way, as specifically as you can, in reference to the administration of justice in the city of New York? A. There has been a good deal said in regard to some of the Judges; I do not know that I can say that the entire administration of justice in the city of New York has been so spoken of; there has been a very unfavorable opinion of it.

Q. As to the particular Judges, or as to particular abuses which have been the subject of comment in your own circle? A. I have heard a good deal of comment in regard to the Supreme Court that was unfavorable, but in regard to the Common Pleas, I have heard it spoken of very well.

Q. What particular abuses have been spoken of in connection with the Supreme Court and its administration? A. Well, there has been a good deal of talk in regard to injunctions being granted, and conflicting orders, and things of that kind.

Q. What about Receiverships? A. Well, that has been spoken of; that receivers were sometimes appointed somewhat unexpectedly, without going through the ordinary routine of any notice. That has been laid to the Code by some people.

Q. That is, it has been laid to the Code that receivers have been appointed without notice? A. Yes, sir; and these conflicting orders and injunctions.

Q. What Judges have you heard spoken of in that connection? A. More particularly, I think, Judge Barnard and Judge Cardozo, and for the last year or two Judge Ingraham's name has been mentioned more than it was formerly, I think. Of course, I am not speaking of any knowledge I have myself; I understand the question to be as to the common talk among members of the Bar. There has been talk of certain influences that were brought to bear to obtain decisions that were not proper.

By Mr. STRATTON:

Q. Did parties who expressed such an opinion profess to have any personal knowledge on which their opinions were based. A. I do not know that they did.

Q. Do you know what give rise to such opinions? A. I cannot tell, only the way the thing was talked of; I know there have been one or two cases where the Express Company cases were pending, I believe the Merchants' Union Express, in which Judge Comstock was counsel, I know that there was a kind of talk that they expected a decision one way or the other, and had some reason to think that it would be so decided. From that kind of talk a person would infer, if it was true, that there was something wrong.

By Judge BARNARD:

Q. Beginning at the last thing. Do you know that John A. Green

received ten thousand dollars in the case of the Merchants' Union Express Company, and said that he wanted it for Judge Barnard? A. I do not think I heard John A. Green himself say so.

Q. Did Judge Comstock tell it to you? A. I have heard of it as coming from Green—that he said he could get an injunction from Judge Barnard whenever he wanted it, or something of that kind; that he could wake him up in the night, and get them at any time; I do not recollect hearing Green himself say it; I did hear that it was claimed in some way that there was ten thousand dollars which was not accounted for very well, that had gone into Green's hands; it was claimed that Judge Barnard got that, or he claimed that he had saved it for him, or something of the kind; I heard it contradicted, and that Green had used the money.

Q. Do you know that L. Thorpe, Major Beardsley, Henry Slocum, Member of Congress, William H. Seward, Jr., with other persons that I cannot think of, went with me to the St. Nicholas Hotel, and that I made Green return that ten thousand dollars? A. No, I never heard of it.

Q. Have you heard Judge Comstock talk of it? A. No; I never heard of it with that particularity; I heard that this matter of John A. Green had been explained in some way.

Q. Do you know that I made him pay back the ten thousand dollars to the Company? A. No, sir; I do not know that particularly.

Q. Have you never heard of it? A. I do not know that I have.

Q. That I went there in company with those gentlemen I have named with a pistol, and made him pay back that money? A. No, sir; the details I did not hear; there were a great many things connected with the Express Company.

Q. Was there anything wrong in my not appointing a Receiver when the Company was perfectly solvent? A. I do not know the particulars.

Q. When Wells, Fargo & Co's. Express and Adam's Express and all the others were banded against them? A. I do not know anything about the merits of the case whatever; I know there was one suit (I do not recollect who it was pending before), and that when it was decided, I recognized the opinion—the style in which it was written.

Q. Are you aware that, except on two occasions, in respect to a corporation, Judge Barnard never appointed a Receiver in his life? A. I do not know anything about the fact.

Q. Are you aware that he never tried a case on the merits where the Erie Railway Company was represented, where they ever won? A. That I do not know; I got more insight into the character of the difficulties between the Erie and the Albany and Susquehanna Railroad from Mr. Black's article.

Q. The information you have received in regard to the New York Judiciary is contained in the *Times* and *Tribune*? A. That I do not know.

Q. Do you read any other papers than these? A. I never read them, or very seldom; I some times read the *Times*, but very seldom.

By Mr. NILES:

Q. Did you ever hear any one question the integrity of the decision of Judge Barnard in those express cases? A. I do not know that I did; the suit that I knew most about, perhaps, was tried not before Judge Barnard, but I think, before Judge Cardozo.

Q. Which one was that? A. One that hung fire for a long time.

Q. Is that the one in which you said you recognized the opinion? A. I do not recollect who tried the suit; the language of the opinion seemed very familiar to me as that of Judge Comstock.

Q. These statements in regard to the use of money, and the power to get injunctions or orders from Judge Barnard—all these things occurred before the trial, did they not—during the skirmishing? A. I am not familiar with the details of any of the cases; I am speaking now of the general talk going on more or less among the profession.

Q. Any of the express cases? A. I do not recollect very distinctly about Judge Barnard trying one; there was another one where they expected the decision right along in a suit brought against all the Express Companies; they all “confessed judgment,” as we would call it in old times; they gave a stipulation, and judgment was entered up, and I was appointed Receiver in that case.

Q. Was there anything wrong about that? A. I cannot say there was; it was supposed that Judge Cardozo was going to decide in their favor; they got scared, I suppose, and this proceeding was for the purpose of heading off; finally it came out right, as they called it, and that was the end of it with me; in connection with that there was some talk that somebody must go to New York; that was rather a new thing up in the country, that after a case was tried, there was to be any influence in that way.

Q. Who made that remark? A. I do not know, only it was the talk of some people interested; I had no interest in it.

Q. In this talk about the ten thousand, were not the people who made that talk the people who were defeated.

Judge BARNARD:

No, they won; Green got the money for winning, and gave out that he had paid it to me; I went up with the friends I have named to the St. Nicholas Hotel, with a pistol, and made him pay it back.

The WITNESS:

It is proper to say that I did hear that that ten thousand dollar matter was explained in some way.

By Judge BARNARD:

Q. I wish to ask a question that may not be very pleasant; you have

had a law suit before me in the Special Term? A. I opposed a motion there.

Q. And you got beat? A. Yes, sir.

Q. And you brought it to General Term? A. Yes, sir.

Q. And got beat there? A. Yes, sir; I would like to explain that. There was an appeal from an order made to strike a case from the calendar, and I was employed as counsel to argue the appeal; I came down, and the Court dismissed the appeal, on the ground that it did not involve the merits. They told me at General Term, "You must enter up your verdict, if you have got a verdict." I entered up the judgment, and then they moved, before Judge Barnard, to vacate the judgment. I appeared there, and the Judge was pretty short, and took his hat in his hand and denied the motion and passed out. Finally I got a stay of proceedings, and went to the General Term. I was beaten there. I had a curiosity to get the opinion written by Judge Ingraham, and he held that having made a motion to strike from the calendar, and having carried it to the General Term, and having been there affirmed, that was an estoppel. Mind you, at General Term it was dismissed on the ground that it did not involve the merits. I made up my mind that I could not practice in that Court..

By Mr. VEDDER:

Q. Is it not the case, that where briefs are presented to the Judge on the argument of a motion, he frequently gives the language of the brief in his opinion; does not the Judge sometimes follow the language that the counsel used in his brief? A. Yes, sir; I do not say that that is unpardonable.

By Mr. NILES:

Q. And this decision of Judge Barnard, made in the language of Judge Comstock, was it not sound? A. I do not recollect what my opinion was at the time.

By Judge BARNARD:

Q. Have you any idea that that case involved thirty millions? A. I have no idea.

Q. Do you know that the result was a consolidation of the Adams & Co., and Wells, Fargo & Co., with the Merchants' Union Express? A. I know that there was a consolidation took place.

Q. The motion was for the appointment of a Receiver? A. Yes, sir.

Q. And James T. Brady and Ira Shafer were employed? A. I do not know; I know that Judge Comstock was.

Judge BARNARD:

In that case I denied the motion for a Receiver; I was charged by John A. Green with having received ten thousand dollars; when I went up to make him return it, he said that he wanted it, so that when I ran for Governor he would use it for me.

By Mr. VAN COTT :

Q. Is Mr. Green a prominent politician? A. Somewhat so.

Q. Did you ever know any Judge except Judge Barnard to enforce the delivery of money with a pistol? A. I do not know that I have.

Q. Is it the practice in the country for orders to be issued for the payment of money, in the shape of a mandatory injunction?

Judge BARNARD :

There was no injunction; I went there along with the gentlemen I have named.

By Mr. VEDDER :

Q. Do you say that John A. Green is a prominent politician? A. Yes, sir.

Q. What is his character so far as being an honest politician? A. If that question is proper, I would say, he is a man that I do not admire very much.

Q. What is his character in the community, so far as morality is concerned—good or bad? A. I never heard it spoken of so far as business is concerned.

Q. I mean, in connection with his political career? A. I do not know. He belongs to one division of the Democratic party, and I to the other. He was a "hard," I believe, while I was a "soft."

Q. Have you ever heard his name spoken of in connection with disreputable political practices? A. I think I have.

By Mr. VAN COTT :

Q. Did you ever hear him well spoken of? A. It would be proper for me to say that General Green assumes often to have influence with Judges, when there is no foundation for it.

By Mr. HILL :

Q. You have been called upon to testify as to the general impression amongst members of the bar as to the Judiciary of New York. I do not know what use may be made of this hereafter, but I wish to inquire whether the general impression is not that the Legislature itself is corrupt—as to the Legislature generally? A. If the question was proper, I would say that the general impression is, that there is great corruption.

Q. Even in the Legislature? A. It touches them.

Q. And that by the extravagant use of money any bill can be put through the Legislature? A. I do not mean to say any bill; the impression has been, for the last three or four years, that money had a great deal of influence.

By Judge BARNARD :

Q. I venture to ask you this one question; it is not confined to the city of New York, but to the State of New York: Is it your impression,

judging from what you know or have heard, that Judge Barnard, in his rendition of any decision, has ever been corrupt? A. Do you want my judgment about it?

Q. What you have heard said? A. The general talk; I know so little about it that I would not like to say that Judge Barnard was corrupt or uncorrupt. I have no knowledge.

Q. From the opinion of men that you have met in New York city, or elsewhere, do you think from what they have said, that he has been corrupt? A. I do not know that New York lawyers talk much of it; I do not recollect.

By Mr. NILES:

Q. Is it the common talk in the country that the John A. Greens, who are hanging around the Legislature, charging them with being corrupt, themselves pocket the money, exactly the same as John A. Green did in the case with Judge Barnard? A. There are a great many cases of that kind where parties pretend to have influence who have none.

Adjourned to ten o'clock to-morrow, March 20.

In the Matter of charges preferred against Hon. G. G. BARNARD, Justice of the Supreme Court. Before the COMMITTEE OF ASSEMBLY.

March 20th, 1872.

JOHN TAYLOR JOHNSTON, a witness called in behalf of the prosecution, sworn; examined by Mr. PARSONS:

Q. Are you a resident of the city of New York? A. Yes, sir.

Q. How long have you resided here? A. Nearly fifty-two years.

Q. Have you had, and if so, what connection with any of the large corporations having their office in the city of New York? A. I have been President of the Central Railroad of New Jersey about twenty-five years.

Q. Are you acquainted generally with the more prominent business men and public men of the city? A. I have considerable acquaintance with them.

Q. Have you interested yourself as a citizen in public affairs, and have you observed the administration of public affairs in city of New York, particularly with reference to the action of

the Courts during the last few years? A. The action of the Courts has been a subject of great importance to all those connected with corporations that may be affected by them, and I have therefore noticed them.

Q. Are you acquainted with the general sentiment which prevails, in respect to the action of the Courts in the city of New York, and particularly the Supreme Court of this district? A. The sentiment is, very bad.

Q. State, if you please, how the opinion which prevails in respect to the action of the Courts, affects the interests of the city, and the monetary interests of the country, if in any way? A. The feeling of insecurity with regard to the Courts, the feeling that justice may be bought and sold like any other commodity, induces a general feeling of distrust, and tends very strongly to weaken the value of securities. It makes also a general disposition, as far as possible, to keep corporations in particular beyond the reach of Courts that it is supposed may be influenced.

Q. Is there any special action of the Courts which has tended to produce, and has produced this feeling of which you speak? A. The action of the Courts with regard to the Erie Railway.

Q. Of which Court? A. Wherever the Erie has come before the public as plaintiff or defendant in the Courts, the community has had the feeling that the matter would not be decided on the justice of the case, but according to private considerations.

Q. And how has that feeling affected the interests of other corporations? A. Badly.

Q. Are you acquainted with the opinion which prevails in Europe, in respect to the action of the Courts in the city of New York? A. I was abroad about two years since, and the general opinion that I met with was so bad, that I was ashamed to state that I was a New Yorker. The opinion was general, that our Courts were venal.

Q. What action of the Courts was referred to as having produced that feeling? A. The opinion that I refer to was a general opinion in regard to the Courts in New York. They don't know our Courts. They don't distinguish among our Courts. It was simply the general impression that the Judiciary in the city of New York were venal.

Q. Was that sentiment due to the action of the Courts, in respect to any particular suitors? A. Particularly in respect to the Erie suits, because the Erie was better known abroad than any other concern.

Q. Have you heard generally mentioned in that connection the action of the Courts, affecting other corporations than the Erie road, either at home or abroad? A. I could not answer that question definitely. There is the feeling that I referred to,

as a general feeling of insecurity that we are not safe, that the fountain of justice is polluted.

Q. Have the names of any particular Judges been generally mentioned in that connection?

Mr. CURTIS :

Do you mean here, or abroad?

Mr. PARSONS :

Here.

A. Why, there are several Judges whose names have been brought forward more than others.

Q. Will you specify the names, if you please? A. Judge Barnard's name has been used oftener than any one else's, and I think Judge Cardozo's name; and Judge Ingraham's name has been brought in frequently.

By Mr. NILES :

Q. Do you mean that was the case before this investigation commenced. A. Yes, sir, before this investigation.

By Mr. PARSONS :

Q. During how long a period has that sentiment generally prevailed? A. I think it began when the Erie first passed into the hands of Fisk & Gould.

Q. And has it continued to the present time? A. Yes, sir.

Q. And how general is that opinion or sentiment on the part of the business portion of the community? A. So general as to be universal. I know of no exception.

Q. Have you any connection with any of the banking or other corporations whose business has been in the city of New York, other than railroad corporations? A. With a number of institutions; with no bank, and with none whose interests have been affected. They have not been in law, and consequently they have not suffered.

Cross-examined by Mr. CURTIS :

Q. Have you ever endeavored to analyze, or get at, any particular causes of this general sentiment—this general apprehension that you speak of? A. You speak of, at home or abroad, sir?

Q. I speak now of that at home? A. The cause of this feeling of distrust was the feeling that the Judges were venal. That they could be affected by considerations, it might be of friendship, or it might be money, but the feeling was that if you went into Court with a case of consequence it might or might not be

decided on its merits ; that was the feeling ; that was what occasioned this sentiment that I speak of.

Q. Now my inquiry is this : have you endeavored to analyze that matter, so as to satisfy yourself how far that is a just or unjust imputation ? A. It is not fair to judge individuals by common fame, and I don't suppose that I am here to speak in regard to any particular individuals. I have been questioned with regard to common fame, and that is the common fame, what I have given, and I think everybody will confirm it, and if they analyze it down, why it comes in the first place on newspaper statements. Then those newspaper statements set everybody to inquiring. Everybody, as far as I know, by inquiring, come with nothing to take away that feeling ; on the contrary, they come with a great deal to sustain that feeling. The result is, that the feeling has become ingrained into the community, a general feeling of distrust and insecurity. The only thing that I know like it, was the feeling in the time of Charles the Second, when there was that same impression that the Judiciary could be influenced, and that therefore justice was not a sure thing.

Q. My question is this, Mr. Johnston : have you, yourself, made any efforts to form an opinion as to the justice or injustice of this imputation, as it respects particular Judges ? A. I have, sir, to some extent.

Q. Is there anything within your knowledge other than common report ? A. I have had many details, at different times, from members of the Bar—I was a member of the Bar once myself, which confirm the general ideas.

Q. How long is it since you ceased to practise ? A. Twenty years or more.

Q. Long before this arose ? A. Oh, long before this ; yes, sir.

Q. In regard to litigations in which the Erie Railroad had been concerned, do I understand you to say that it is the common impression in the community that all or most causes that the Erie Railway Company have had before Judge Barnard, for instance, have not been decided on their merits ? A. That is the impression, sir.

Q. Have you made any effort to ascertain how far that is true, or how far it is apparently true ? A. No, sir, I cannot say that I have any more than a great many matters that I have inquired about. I have no interest in the Erie, and it was a matter that interested me simply as connected with a corporation, and a corporation which might at any time be influenced by a Court of Justice here ; and also as a citizen of New York.

Q. Now, speaking of this general and prevalent impression that the Courts in this city are venal, or that any particular Judges are venal, have you met with any instance in which any specific act of venality has been assigned by anybody ? A.

Yes, sir. I have met with a number of such things which were satisfactory to myself in regard to the particular cases, but which would not be legal evidence. You speak with regard to the impression upon my mind, with regard to how far I would be satisfied. I felt satisfied with regard to those things from the statements which were made from parties whom I believed. It was not always a money question. It was thought that it was often as much favoritism as it was money.

Q. Have you ever known of any instance that appeared to you to be well authenticated of a charge brought against any particular Judge of receiving money for a decision? A. No, sir; nothing of that kind. It would not be at all likely that such a thing would be so public as that. I have never been presented with any evidence on such a point as that.

Q. Then when you use the expression that the public have a general impression or feeling that the Courts are venal, you don't mean to include pecuniary corruption, do you? A. Yes, sir, I do. I mean to include that.

Q. You mean to say that that is the imputation? A. That is the imputation. There are the two things. The impression in the community is that the Judiciary may be influenced by money. Then there is another impression that the Judiciary may be influenced by friendship or other motives; that it would be friendship in one case, and that it might be enmity in another.

Q. Have you ever heard the same thing, or the same kind of thing, imputed to any of the Federal Judges in this city? A. No, sir.

Q. Have you at all had your attention directed to any inquiry, or have you reflected in any way, upon the question of how far this state of feeling is or ought to be imputed to the condition of the law itself, as to the action of individual Judges? A. I beg your pardon. I did not catch the meaning of it.

Q. Have you ever, for instance, heard people talk of or discuss the question of whether the facility with which the law permits injunctions and Receiverships to be obtained is in a considerable degree responsible for this condition of things? Have you heard that subject discussed? A. Yes, sir, very often. That subject of injunction is the crying evil of the day, and that is considered as the dangerous weapon in the hands of the Judges. The injunctions are granted with so much facility, and on such trifling grounds, that if the Judge is disposed to misuse his power, he has in that the very strongest and most effective means of doing so.

Q. You are yourself acquainted with the condition of the law on that subject, are you not? A. I have not had occasion to

look at it. The law has been very much changed since I practiced.

Q. Well, you do know, do you not, that the provisions of law are such that it is very easy for an adroit and skillful counsel, unscrupulous lawyers, to present a case to a Judge in such a shape that he is obliged, under the law, to grant an injunction order? You know that to be the law, don't you? A. No, sir. My knowledge of the law is not sufficient to enable me to say that.

Q. In respect to this European opinion, so far as you have met with it, by personal intercourse with intelligent people abroad; is it understood, or believed, or supposed there that our Courts are venal, in the sense of pecuniary corruption? A. Yes, sir; that is the particular opinion which they have; of the other, they know but little.

Q. Did you ever hear of any instance, or have you heard any particular occurrence cited abroad, as tending to confirm that opinion? A. It is two years since I was abroad, and the most of the objectionable proceedings have been since that time. It was the first proceeding in the Erie which gave this state of feeling; when they found the Erie taken possession of by certain individuals, and they seemed to be sustained in their positions by the Judiciary, and that there was no power that could oust them, that feeling begun that the Judiciary could not be trusted.

Q. You didn't hear any specification of any fact or occurrence in particular, as tending to confirm this unfavorable opinion of our Courts? A. Yes, sir; I heard the particular facts and occurrences, which at that time were new. I could not say now what they were, but it was the particular facts and occurrences which at that time were fresh, which had just occurred on this side of the water, which made the opinion that I have spoken of, on the other side of the water.

Q. Well, was it anything more than this Mr. Johnston, that from the supposed unscrupulous character of two men, Fisk and Gould, who had obtained control of the Erie railway, the conclusion was jumped at that they would be able to control the Courts? A. The particular impression at that time was, as the phrase is, that they could control Judge Barnard; that was the particular impression at that time. When you have got no particular landmark, it is difficult to remember with accuracy. I am remembering as accurately as I can; that is all that I remember; I don't recollect at that time any other matters being prominently brought forward, but that was the impression made.

Q. Were you able to trace, or perceive in what way that opinion had reached Europe; how it came to be disseminated? A. In the first place, through the American newspapers—the ex-

tracts from the American newspapers on the subject. In the second place, through the letters of the correspondents of the bankers.

Q. And yet you heard no specific fact mentioned, which if you had come home and investigated it, would have satisfied your mind one way or the other? A. Yes, sir; I heard the specific facts which were new at that time, which had just occurred at that time, and if I had returned at that time, and had proceeded to investigate the subject, those were the ones which I would have taken up for investigation.

Q. Will you be good enough to mention those? A. I cannot mention them. I could not without looking back—probably consulting my letters, or one thing or another, to see what it was, that was new at that time. There are a good many things that have occurred during the past three years, but I don't recollect exactly what it was—what particular facts they were at that time.

Q. I understand you, then, that the general fact which seemed to be in the minds of the people who entertained this view abroad, the general fact, so far as it could be traced to anything specific, was that certain decisions had recently been made by Judge Barnard, which were supposed to have been made not on their merits, but from personal favoritism; was that it? A. That was my impression; that they had not been decided on their merits.

Q. Now the people who undertook to talk of the merits to those litigations, or whose opinions about this matter seemed to be founded on the merits of those litigations, do you know to what extent they had means of knowing anything about the merits? A. Some of them are well informed, others had no information, but just rumors and newspaper stories.

Q. Those who were well informed, or seemed to be well informed, were they persons who had an interest in the subjects of litigations? A. They were interested in American affairs, and I consulted them with regard to the opinion that I had read in the newspapers, in order to see what their private information was, and how far it agreed with the information that I had myself from my correspondents.

Q. Have you ever known any one here to impute to Judge Barnard any specific act of pecuniary corruption? A. I don't think I have any; any specific thing?

Q. Yes, sir? A. I don't think I have.

Q. Have you never heard any of the Federal Judges in this city spoken of, as being unduly under the influence of particular counsel? A. Not that I remember; I think not; I will answer that question positively, that I never have.

Q. Have you ever heard, either at home or abroad, among business men, and men largely interested in affairs in any portion of

this State, the opinion or feeling in reference to the Courts attributed to the condition of the Bar—the general demoralization of the Bar, I will call it? A. I have often heard it said, that the lawyers were afraid to do what they ought to do, for fear of coming under the displeasure of the Judges.

Q. Have you not often heard it said that there were lawyers, and great numbers of them, who would and did constantly endeavor to exercise improper influences? A. Yes, there are a good many members of the Bar, that I suppose are pretty bad.

Q. I don't speak of whether they are positively bad, or good, but what is the general imputation? A. The general impression is that the Bar has degenerated.

Q. Very much indeed? A. Considerably; yes, sir, a good deal.

Mr. NILES:

The members of the Bar Association, especially, I suppose.

Mr. CURTIS:

I am not inquiring about any particular knot of men.

Q. I will ask you only one other question, and that is this—is it not your opinion, that an amendment of the law, in respect to the powers of Judges to grant injunctions, a much more strict regulation, in regard to the cases in which injunctions can be obtained, would go far toward curing this evil? A. Those reforms would take away in a great measure, from Judges, the power of doing what has been complained of.

Q. Isn't it very desirable that that power should be taken away? A. It is very desirable.

Q. Isn't it desirable, not only on the public account, but on account of the Judges themselves, that they should be relieved of that responsibility? A. It is on every consideration.

By Mr. NILES:

Q. You use the expression that the impression was that justice was bought and sold; do you mean that the general impression is, that injustice may be bought? A. Yes, sir.

By Mr. PARSONS:

Q. You have spoken of information which you have received from persons resident abroad, who were interested in American affairs. Were those gentleman interested also in American securities? A. Yes, sir; it was through their interest in American securities, that they came to be acquainted with American affairs, and took any interest in them.

Q. You have also spoken of the degeneration of the Bar; has

not such information as has been communicated to you upon that subject been coupled with the name of one or two individuals prominently? A. It has attached more particularly to one or two names, but there has been a general impression that what was wrong on the Bench has extended to the Bar; that corruption on the Bench has produced corruption in the Bar.

Q. Have not the lawyers whose names have been mentioned in that connection been lawyers who have been involved in the litigations of which you speak, where you think injustice has been done by the Courts? A. Yes, sir, principally.

Q. And has not that litigation been largely litigation involving the interest of either the Erie Railway or Messrs. Jay Gould and James Fisk, Jr. A. That has been the litigation which has been the most closely watched, where the course of counsel has been most closely criticised.

Q. You have spoken of the danger of having Judges intrusted with so much power to grant injunctions and other processes of the Court; is that danger due to the fact of the power, or the manner in which the power has been exercised? A. Well, it is to the fact of the power and to the manner both; it is a power which is so great that it may be exercised at any time to the public detriment.

Q. Is the power of which you speak a dangerous power in upright hands? A. I think it is so considered; I think it is considered that the power with regard to injunctions is greater than ought to be granted to any Judges, upright or the opposite.

Q. And how is that power, according to general repute, affected by the character of the Judge? How does the character of the Judge bear upon the exercise of the power? A. The worse the character of the Judge, the more dangerous the power.

WILLIAM A. BOOTH, a witness called on behalf of the prosecution, sworn; examined by Mr. PARSONS:

Q. How long have you been a resident in the city of New York? A. Nearly 52 years.

Q. During what portion of that time have you been engaged in business here? A. I have been a merchant since 1825; I was a clerk from 1821 to 1825.

Q. Have your transactions been large, or of what character have they been? A. Generally been large.

Q. Are you now actively engaged in business in the city of New York? A. Yes, sir.

Q. What is your business now? A. My business here is sugar refining.

Q. Have you held positions in connection with any of the considerable corporations, whose offices are in the city of New York? A. Yes, sir, a number of them.

Q. Will you mention those with you have been connected? A. I was President of the American Exchange Bank for six years; I have been Vice-President of the Seamen's Bank for Savings, for several years; connected as a director in the New York Mutual Life Insurance Company. Those are the prominent ones that I am now connected with, and have been for a number of years.

Q. Have you been connected with any of the Railroad Co's. as a director, or in any other capacity? A. I was connected with the Chicago and Northwestern Railroad, from 1860 to 1867 or '8 as a director, and was also with the Ohio and Mississippi Railroad Co., as a trustee of that trust, from about 1860 to 1870, 10 years, and I am also connected with the Indianapolis, Cincinnati and Lafayette Railroad Co., and am now its President.

Q. What attention have you given, within late years, to public affairs in the city of New York, and particularly what observation have you extended to the action of the Courts here? A. I was more prominently, and only prominently connected with public affairs as being chairman of the Investigating Committee of Citizens in September and October last, and my information and action in relation to the Courts has been one of general observation. I have had no particular connection with them.

Q. And during what length of time has that general observation extended? A. It has been for 20 or 30 years more particularly.

Q. To what extent are you acquainted with, and in the habit of seeing the more prominent business men of the city? A. Well, I meet them every day, somewhat extensively sir, in some form. I am President of the Importers and Grocers' Board of Trade, and that brings me largely in contact with them besides from my relations with these other institutions.

Q. Are you connected with the Chamber of Commerce? A. No, sir.

Q. Has the action of the Courts sitting in the city of New York within the last few years been a frequent topic of discussion among the business men whom you meet, and is there a prevailing opinion in respect to the action of the Courts? A. It is frequently discussed, the action of the Courts among business men, and I think there is a very decided opinion among them in relation to the Courts.

Q. A general opinion? A. I should judge, as far as my opinion goes, it was very universal among the more intelligent business men.

Q. Will you state, if you please, what that opinion is? A. I think that it is generally a want of confidence in the Courts.

Q. Do you mean a want of confidence that the law will be

honestly administered in the Courts? A. Yes, sir, I mean that, and a want of confidence in the entire administration of the Courts—partiality.

Q. What action of the Courts, if any, has produced that prevailing sentiment? A. I think it is more particularly in two respects—that in regard to references, and in regard to injunctions.

Q. Has the subject of Receiverships been mentioned in connection with this opinion of which you speak? A. That is in connection with injunctions; yes, sir; the same thing.

Q. By injunctions, you mean injunctions and Receiverships? A. Yes, sir; those things which fall under it.

Q. Has the action of any particular Judges been generally mentioned in connection with this opinion of which you speak? A. Well, I think it more generally refers to Judge Barnard than to any one else, although it has occasionally referred to Judge Barnard and Judge Cardozo; I think I seldom hear the other Judges spoken of, but I have sometimes heard Judge Ingraham's name mentioned in this connection, but very seldom.

Q. Has there been action of the Courts in cases in which were interested any particular parties which has been spoken of in this connection, and which has tended to produce the sentiment of which you speak? A. Have there been any cases?

Q. Any particular parties, any particular corporations or individuals, the action of the Courts in respect to whom has brought about this sentiment? A. I think it is more generally the action of the Courts in regard to the Erie Railroad, from the fact that that has been more prominently before the public, but I think in the same connection there is a very general feeling of insecurity to the public, in consequence of the freedom with which injunctions are granted and Receiverships appointed.

Q. Under whose administration of the Erie road is it that the Erie has been mentioned in connection with these abuses? A. Chiefly with Gould and Fisk.

Q. Since the Erie road came under the control of Messrs. Fisk and Gould? A. Yes, sir.

Q. Do you know what effect, what practical effect that feeling of insecurity of which you speak has had upon the interests of the city, and upon American securities, whether at home or abroad? A. I think it has produced a feeling on the part of the mercantile community, or business community, that they are not secure from litigation in consequence of the freedom with which Courts grant injunctions.

Q. Do you mean the ordinary liability to litigation or liability to the abuses of extraordinary proceedings in litigation? A. It is the liability to extraordinary proceedings, more particularly.

Q. And of what character? A. In the freedom with which injunctions can be granted.

Q. Do you mean injunctions and Receiverships? A. Yes,

sir, the same thing ; the Receivership, I suppose, follows the injunction usually, not always.

Q. It has done so in some cases pactly but not necessarily. I believe your answer was not complete to the last question, as to whether the value of American securities had been affected by this prevailing feeling of distrust? A. My opinion is that it has.

Q. And affected in what way? A. Unfavorably ; I think that is the feeling in Europe ; I have not been in Europe now for three or four years, but I think that feeling existed at that time, when I was there, among parties ; I think it does at home here, and it does through our country, I am confident.

Cross-examined by Mr. CURTIS :

Q. You have spoken of the imputation against the Courts, of partiality. Have you heard any one assign any specific instance, or impute in any specific instance to Judge Barnard pecuniary corruption? A. I can't say that I have directly.

Q. Well, what do you mean by directly? A. Parties have said to me in certain cases, that Judge Barnard was to participate in certain advantages, but I don't know whether it was a mere say, or whether there was any truth in it.

Q. That he was to participate? A. Yes, sir.

Q. That it was expected that he would participate? A. So it was stated.

Q. Did you ever hear anybody say that he had any proof, or speak of any particular fact which satisfied your own mind that Judge Barnard had been guilty of pecuniary corruption, which would have satisfied you of it, if it had been true? A. Yes, sir.

Q. Can you specify? A. About four weeks ago there was an injunction granted by Judge Barnard in a suit in which parties had to put up some \$60,000, and afterwards wanted the suit withdrawn and the injunction dissolved, and it was reported to me that it could not be withdrawn without the payment of the Receiver's fees, and Judge Barnard said that he must have his fees also.

Q. Now, sir, will you give me the names of that case? A. I don't know who the plaintiff in the case was ; it was a case against Perkins, Livingston & Post.

Q. Perkins, Livingston & Post were the defendants, were they? A. Yes, sir.

Q. Who were the lawyers? A. I don't know, sir.

Q. What do you mean by the parties putting up \$60,000—what did you understand by that? A. The parties placed in the hands of the Court \$60,000 to abide the issue of the suit?

Q. Do you mean that they were required to pay into the Court \$60,000? A. I believe they were ; to pay into somebody—into somebody's hands.

Q. Was that \$60,000 the subject of the litigation? A. Yes, sir; the subject of the litigation.

Q. You understood it so? A. I understood it so.

Q. You understood that that was the controversy, the right to that \$60,000? A. Yes, sir.

Q. And that it was required to be paid into Court? A. Yes, sir, paid to the Court.

Q. Then you were informed that there was an effort or negotiation for a settlement? A. They wished to withdraw the suit, I believe, and get the money back.

Q. And you were also informed that it was required that the Referee's fees should be paid? A. It was simply stated to me that they could not get their money from the Court without paying the Referee's fees, and Judge Barnard said that he must have his fee also.

Q. Now who told you that Judge Barnard said that he must have his fee also? A. Well, I think it was Mr. Kennedy of the firm of J. S. Kennedy & Co.

Q. Who is he? A. He is a dealer in railroad iron.

Q. Where is his place of business? A. 41 Cedar street.

Q. What was his relation, if any, to this litigation, do you know? A. I believe he was not interested in it directly.

Q. Do you know whether he was indirectly? A. He might have been as trustee.

Q. As trustee of what? A. Of some securities he held. He mentioned the case to me, as being a case in which—

Q. In which he had an indirect interest? A. He did not say that he had an indirect interest. I inferred that he had, from the fact of his holding a trust in connection with some securities which I supposed might be involved in the suit.

Q. Now did he say to you where he got his information that Judge Barnard had required some fee to be paid to him? A. He did not that I recollect of.

Q. Can you give me the language that he used to you? A. No nearer than I have now, I believe, sir.

Q. Will you be kind enough to repeat that, as well as you can recollect, what he said Judge Barnard required? A. Simply that Judge Barnard wanted his fee also.

Q. That Judge Barnard wanted his fee also, as well as the Referee's fees should be paid? A. Yes, sir.

Q. What did Mr. Kennedy say to you on that subject further, of this fee of Judge Barnard? A. That was all that he said about the fee of Judge Barnard. It was a passing conversation there in his office a few moments.

Q. Did he speak of any arrangement that had been made, or that was in contemplation, looking to the payment of this fee to Judge Barnard? A. No sir, not that I know of; that was all that he said to me about that fee.

Q. And he didn't give you any source of information on the

subject? A. I am not certain whether he gave me his source of information or not, or whether he said that he understood it was so and so.

Q. He didn't tell you who he understood it from; A. don't think he did; if he did, he said it was probably Mr. George Bliss—if he told me; I am not certain but what he said it was Mr. George Bliss.

Q. Did you understand that George Bliss was the lawyer connected with the case?

Mr. ANDREWS:

He is not a lawyer, he is a banker.

Q. This Mr. Bliss was a merchant was he? A. He is a banker.

Q. Had he any relation to the case that you know of? A. I don't know; he had some relation to the case, probably because the case related to some railroad trusts in which he had an interest in the trust.

Q. Did you hear Mr. Kennedy make any reference to the lawyers engaged in the case? A. No, sir.

Q. Do you know who they were? A. I don't.

Q. On either side? A. No, sir.

Q. And you don't know the name of the plaintiff in the case? Perkins, Livingston & Co. were defendants? A. Yes, sir; I don't know who the plaintiff was.

Q. Did you ever hear anything further on this subject of the demand of a fee by Judge Barnard? A. No, sir.

Q. Nothing beyond what Mr. Kennedy told you? A. That is all.

Q. Did Mr. Kennedy mention any ground of a fee? A. No, sir; simply the passing remark that the parties had got the funds locked up there, and that they could not get them, without paying the fees to get them back again, or paying the Receiver and the fee.

Q. After this had occurred, and after he made this statement to you—Mr. Kennedy—when did you first speak of it to any one? A. I don't think I have ever said anything to anybody about it, excepting that I told my two partners, when I went down, the circumstances.

Q. Your partners are who? A. One is my son, and the other is my son-in-law.

Q. Beyond that have you spoken of it to any one? A. I don't recollect that I have.

Q. Can you give us any other instance in which any specific charge of this nature has been made against Judge Barnard, to your knowledge? A. No, sir; I don't recollect any now.

Q. Did you attach any importance to this statement? A. Why no, sir; it was a casual conversation, the gentlemen mentioned it to me in his office; he told me, I thought of it, and I

didn't attach any special importance ; I didn't think it was of any importance.

Q. Did you understand from Mr. Kendedy that this requirement or payment on the part of Judge Barnard had been made publicly ? A. No, sir ; I didn't hear that it was made publicly or privately ; he simply stated to me the fact that they could not get the money without paying fees, and I think the point that he made was, that the parties that had attempted the suit had got their money locked up, and had got to pay something to get it back again.

Q. You don't know whether he meant to be understood that this requirement had been made publically in open Court, or had been made privately ? A. I don't think he knew ; I don't so understand.

Q. He did not discriminate ? A. No, sir.

Q. He did not suggest that there was to be any steps taken about it, did he ? A. That is all he said to me, sir.

Q. Have you an extensive acquaintance among lawyers ? A. Somewhat.

Q. Practicing lawyers, I mean ? A. No, sir ; I never have had a suit in Court in my life, sir.

Q. But I say are the lawyers with whom you are acquainted, men engaged in practice ? A. Yes, sir.

Q. Considerably ? A. Yes, sir.

Q. Did you ever hear any lawyer in this city impute to Judge Barnard, any act of pecuniary corruption ? A. Well, I don't recollect that I have now, but I have heard it imputed to him very often in various ways.

Q. By whom ? A. Well, sir, a sort of common conversation ; I could not specify now by whom.

Q. I don't speak now of the possibility of his being corrupt, whether you heard that imputed to him, but I speak now of the statement of any particular fact ? A. I could not give you any particular fact, sir.

Q. What you could give me then, or mean to be understood as giving me is, that you have heard it said that he was capable of being corrupted ? A. I think that is the general impression ; I give you that as the general impression, judging from his acts, and I judge that from the impression of the bar.

Q. You have heard that same thing said among members of the bar, have you ? A. I have had that opinion from what I have heard them state. I don't know that I should say that they stated it directly.

Q. And yet you never heard anybody assign any particular fact ? A. No ; not that I now recollect of ?

Q. As regards this general feeling of the want of confidence in the Courts as caused by the facility and frequency of references and injunctions and Receivers ; now in regard to injunctions and Receiverships, do you know anything in regard to the state of the law which regulates or permits those actions ? A. No, sir.

Q. With respect to the other Judges as compared with Judge Barnard in this respect, do I understand you to mean to testify that Judge Barnard's general repute is worse than that of any other Judge? A. I think it is, sir.

Q. Have you ever paid any attention—have you ever endeavored to follow out and analyze the different elements of this opinion about Judge Barnard? A. No, sir.

Q. Never have tried to follow it up to ascertain how far it was a just or unjust imputation? A. No, sir.

Q. Have you expressed among other men of business any opinion on that subject? A. I think it very probable that I have; I had a very decided opinion; I probably have expressed it.

Q. What opinion have you expressed? A. If I have expressed any, it has been that Judge Barnard and Judge Cardozo particularly, more prominently, are considered as being corrupt Judges.

Q. That they are so considered? A. I may have expressed that opinion; I have that opinion.

Q. That they are so considered? A. Yes, sir.

Q. Do you entertain the opinion that they are so? A. I say I do entertain that opinion, and I probably have expressed it.

Q. That they are corrupt? A. Yes, sir.

Q. On what have you formed that opinion? A. What I have read of their acts in the newspapers.

Q. Formed it from the newspapers? A. Principally from that.

Q. Statements that you saw in the newspapers of their acts? A. Yes, sir.

Q. Have those statements generally been accompanied with comments? A. Sometimes; sometimes not.

Q. Have you ever had any means of knowing how far those statements were correct or incorrect? A. I never have examined; no, sir.

Q. You are the Chairman, are you not, of the Committee of Citizens? I don't know whether it was a Committee of citizens or public officers? A. I was Chairman of the Committee of Citizens.

Q. What is that Committee commonly called? A. That is the title of it, Chairman of the Committee of Citizens.

Q. It is not the Committee of Seventy? A. No, sir; entirely different.

Q. This that you speak of is a Committee of private citizens, who undertook the investigation of the Comptroller's office? A. The Committee of sixteen who undertook the investigation of the city accounts; I was Chairman of that Committee, and we were in connection with a Committee of the Board of Supervisors and the Board of Aldermen, which made a Committee of twenty-four.

By Mr. NILES :

Q. Appointed by whom? A. Appointed by the Board of Supervisors.

Q. Of the city? A. Of the city.

Q. The county rather? A. The county.

By Mr. CURTIS :

Q. You were requested by the Supervisors to act in that capacity? A. Yes, sir.

Q. You acted in conjunction with their Committee? A. The Committee of Citizens of sixteen were invited to co-operate with the Committee of the Board of Supervisors and the Board of Aldermen, to investigate the city accounts. The Committee of sixteen acted more prominently than the other Committee. The investigation was left very largely to the Committee of sixteen.

Q. Did it come within the scope of your Committee, or of its action at all, to inquire into the state of the Judiciary? A. No, sir.

Q. And you never did make any inquiry at all, either in a public or an individual capacity? A. No, sir; I never had occasion to.

Q. Now, is there not prevalent also in the community a general opinion that the Legislature of the State of New York contains large numbers of corrupt men? A. I think it is that the Legislature of last year and the year before did, but I don't think that it now is, that it contains a very large number of corruptible men.

Q. Is it not the general opinion that there are corruptible men in the present Legislature? A. I think it is the opinion that there are a few.

Q. Do you know of any instance during the present session of the Legislature, that, according to your information of what was taking place in the community, means were expected to be taken to influence measures in the Legislature improperly? A. No, sir.

Q. You have not heard of anything of that sort? A. I have not.

Q. With regard to the opinion that was prevalent with respect to the character of the last Legislature, on what was that apparently founded? A. On the report of their acts.

Q. It was an inference drawn from the report of their acts, as this opinion about the Judiciary is an inference drawn from the report of their acts, wasn't it? A. Yes, sir.

Q. It was of the same nature? A. From what the people gathered from the public press, and from what they gathered from the actual doings of the Legislature.

Q. In like manner this opinion about the Judiciary seems to be founded, does it not, upon what the public knew of their acts, and upon the statements and imputations in the newspapers? A. I think it is.

Q. Principally? A. Yes, sir.

By Mr. NILES:

Q. Mr. Booth, don't you understand that it is a mere question of price, as between this Legislature and the last, that this is simply a little higher price? A. No, sir.

Re-direct by Mr. PARSONS:

Q. Are the newspaper statements, of which you have spoken as furnishing you information with reference to the action of the Judges, which you have mentioned, newspaper accounts of legal proceedings before them? A. In part.

Q. You have mentioned Mr. J. S. Kennedy as having communicated some information to you. Is Mr. Kennedy a respectable and reputable business man? A. Highly so.

Q. Largely engaged in business transactions? A. Yes, sir.

Q. You have also spoken of Mr. George Bliss as having perhaps been mentioned by Mr. Kennedy as his informant. Who is Mr. George Bliss? A. Of the firm of Morton, Bliss & Co., very large bankers; bankers doing a very large business.

Q. With what foreign money capitalists are Morton, Bliss & Co. connected? A. They have a house, Morton, Rose & Co., London.

By Mr. TILDEN:

Q. Who is Rose, of that Company? A. He is Sir John Rose, from Canada. He went out about two or three years since.

By Mr. CURTIS:

Q. Is Mr. Bliss now in the city? A. I believe he is.

Q. Is Mr. Kennedy in the city now? A. Yes, sir.

By Mr. PARSONS:

Q. You were asked whether there was a prevailing opinion that Judge Barnard was pecuniarily corrupt in his performance of his duty as Judge. Will you state, without regard to whether the impression is well or ill founded, whether there is that prevailing opinion, on the part of the business community, that Judge Barnard is influenced by money? A. I think that is the general opinion, sir.

Q. I will ask you whether that same opinion extends to any other Judge, and if so, which other Judges? A. I think it is chiefly confined to Judges Barnard and Cardozo, but I think there is a general lack of confidence in our Courts.

WM. F. HAVEMEYER, a witness called on behalf of the prosecution, sworn, and examined by Mr. PARSONS:

Q. How long have you resided in the city of New York? A. Sixty-eight years.

Q. Were you born here? A. Yes, sir.

Q. And have you lived here all your life? A. Yes, sir.

Q. Have you, during your residence in New York, interested yourself in public affairs? A. Yes, sir.

Q. For example, what? A. I have been Mayor of the city of New York twice, a member of and President of the Commissioners of Emigration, and President of a Bank.

Q. Have you been largely engaged in business in the city of New York? A. Well, I have been in business, not very largely engaged, in the city of New York. My business life was begun and ended here.

Q. With what monied institutions have you had any connection as Director or otherwise? A. I have been a Director, forty years ago, in the Merchants' Exchange Bank, and I have been President for ten years of the Bank of North America—from 1851 to 1861.

Q. Have you an extensive acquaintance among the business and more prominent men of the city? A. I have, yes, sir, some acquaintance with pretty much all classes.

Q. Has the action of the Courts in the city of New York been a subject of comment and discussion with the class among whom you mix? A. I have heard expressions in reference to the Courts, more or less, from almost everybody whom I have come in contact with, whenever that question presented itself.

Q. Is there a prevailing opinion upon that subject? A. I should think there was.

Q. With business men? A. I should think there was.

Q. And with the public generally? Yes, sir.

Q. Will you state what is that opinion, so far as it concerns the Supreme Court in this District? A. Well, the Supreme Court as presided over by whom?

Q. The Court of which Judges Ingraham, Brady, Barrett, Barnard and Cardozo are now Judges? A. Yes, sir; I have heard expressions of a want of confidence in the administrations of Barnard and Cardozo, and I have heard, in some respects, Mr. Ingraham rather criticized unfavorably.

Q. Has this prevailing opinion of which you speak, in connection with which have been mentioned the characters of Judges Barnard and Cardozo, been due, or been stated in connection with any particular action of the Court, or action of the Court in any particular litigation or proceedings? A. I have heard it with reference to the Erie Railway Co. controversy; more particularly, I think, with reference to the Erie Railway controversy.

Q. Do you mean by the Erie Railway Co. that particular corporation as such, or Messrs. Fisk and Gould, and the various corporations in which they have been interested? A. The controversy growing out of the connection of the Erie Railroad and its surroundings.

Q. The use or abuse of what particular process of the Court

has been mentioned in connection with this opinion of which you speak? A. Well, in the appointment of Receivers.

Q. Are there any particular cases of the appointment of Receivers which have been generally mentioned in connection with the expression of this opinion. A. I think, if I recollect right, the Receivership connected with the Erie Railroad Co. of James B. Sweeny.

Q. Do you mean Peter B. or James M.? A. James M.

Mr. ANDREWS :

He means Peter B., I presume.

A. In connection with some of the Erie Railroad matters, in which he received a very large fee.

Q. Do you remember the amount? A. If I recollect right, it was some \$150,000.

Q. Have you heard other Receiverships affecting the interest either of the Erie Railroad, or of Fisk & Gould, mentioned in this connection? A. I don't recollect any particulars.

Q. Do you remember the Receivership of the Albany & Susquehanna Railroad? A. No, sir.

Q. Do you remember the Receivership of the Erie English stock? A. No, sir.

Q. Do you remember the Receivership of the Union Pacific Railroad Co.? A. I recollect something about it, but I could not state any particular in regard to it.

Q. That is not the question, whether you can state particulars, but have either of those Receiverships been mentioned in connection with the expression of this opinion that you have stated? A. Well, I cannot recollect sufficiently.

Q. In what way, and to what extent, if at all, has the action of the Court in the view which you state as entertained of it, affected the public interests of the city, and the value of American securities, and the commercial interests of the city, and of the country as well? A. Well, of course, any maladministration of justice will affect injuriously every interest. I am not connected with the monetary transactions, or the connection of other parts of the world with the city. There are gentlemen, of course, who are in direct relation with the monetary interests on the other side of the water, and their opinions are, as gathered generally, that there is a discredit thrown upon all our monetary institutions by the difficulties that are put in the way through the Courts in obtaining what people deem to be their rights.

Cross-examination by MR. CURTISS :

Q. Do you know anything on the subject of that fee that was said to have been paid to Mr. Peter B. Sweeney as a Receiver?

A. No, sir; I don't know anything about it, except the general—I don't know whether it was paid or not.

Q. You don't know whether it was a matter agreed to by all

the parties connected with the litigation, or not—do you? A. No, sir.

Q. Do you know anything about it? A. No, sir; except the fact as generally, currently reported. It was a very large sum for a very little service; that was my own opinion.

Q. Are you chairman of the Committee of citizens, called the Committee of Seventy? A. Yes, sir.

Q. Did that Committee, during the last Autumn, promote a proceeding before Judge Barnard, to obtain an injunction restraining the action of the city money department? A. Do you mean the Foley suit?

Q. Yes, sir? A. No, sir; Mr. Foley had commenced his suit before the Committee were in existence, and had proceeded some short distance; was ready, I believe, to argue the case before Judge Barnard. When this Committee was about being formed, they requested Mr. Foley to postpone the commencement of that suit until they should become organized. Mr. Foley, the moment that the Committee was organized, and I don't know but a little before—a day or two before—commenced his action before Judge Barnard, and I think obtained—yes, he did obtain a decision in the case, when the Committee assumed Foley's position in the suit.

Q. The Committee adopted that suit, did they? A. Yes, sir; adopted the suit after the decision.

Q. After the decision? A. Yes, sir; relieved Mr. Foley, and occupied his place.

Q. Was that before the injunction was granted, or afterwards? A. I think it was after the injunction was granted.

Q. Did you yourself pay any attention to that matter? A. In what respect.

Q. Did you yourself pay any personal attention to the conducting of that case, or did you inform yourself about it? A. In what respect.

Q. In any respect? A. I stated that the suit was adopted by the Committee. The Committee appointed counsel, and of course the counsel took charge of the suit. I had nothing to do with the suit personally, after it had gone into the hands of the counsel.

Q. You understood what the injunction was, did you not? A. Oh, yes.

Q. Were you in Court when the case was argued? A. No, sir.

Q. You understood it to be an injunction? A. Restraining, I think, the Comptroller from paying out, or from doing anything pretty much.

Q. Did you consider that an injurious or unfortunate, or wrongful exercise of the power of injunction? A. Well, if you want me to go into—I will tell you how it impressed me, if you wish me to do it.

Q. I would like an answer to my specific question first, then I will ask you further. I ask you if you considered it an injurious or improper, or unfortunate, or wrongful exercise of the power of injunction? A. Well, no, I did not.

By Mr. NILES :

Q. Let me ask you one question right here; didn't you consider that the most important act that was ever done towards stopping the defrauding of the public treasury, and helping to break up the Tammany ring? A. It resulted in that, but I don't think that was the intention.

By Mr. CURTISS :

Q. You were not asked the intention; you were asked how you considered it? A. Well, I considered that in view of the conduct of the ring, that it was a very proper course to be taken; I think it was in response to the public sentiment, who wanted to get at the ring in any way, and they did not seem to care how it was done; and I think that decision was justified by the public sentiment. It broke up the ring, but in a different way, I suppose, from what they anticipated.

Re-direct examination, by Mr. PARSONS :

Won't you state whether or not that injunction was preceded by a strong public sentiment, and in what direction that sentiment was, if it existed? A. Why, of course there was a general public sentiment against the Ring, as it was termed. That Ring seemed to be fastened upon the public, and they would have justified any measure to rid themselves of it. The injunction was unquestionably in the direction of the public opinion; whether it was legal or illegal, or proper, in that respect, or not, I don't know anything about; there is a difference of opinion on that subject.

Q. Was that public opinion very strong and very loudly expressed? A. Yes, sir.

Q. And during what length of time had it prevailed prior to the granting of that injunction? A. For a year, I suppose. It began in the Spring to assume form, and excited the public to some action. The Society of Political Reform was started some three or four months, and then came the meeting of September 4th, which ended in the appointment of the Committee of Seventy.

Q. Do you remember that the intention to apply for that injunction was publicly proclaimed through the press, for a few days preceding the application to Judge Barnard? A. I don't recollect.

Mr. NILES :

What is the date of that injunction?

Mr. PARSONS :

It was in the Summer. I don't remember the exact date—July or August.

The WITNESS :

It must have been in September ; it was some time in September ; early in September.

Q. Was there not a strong and loudly expressed public feeling for just that relief an injunction to restrain any further disbursement from the city treasury, immediately preceding the granting of that injunction by Judge Barnard. A. Public sentiment.

Q. Public sentiment? A. Yes, sir, of course.

Q. Expressed through the newspapers, and otherwise? A. Yes, sir; that is my recollection.

Q. Has Judge Barnard, subsequent to granting that injunction, in any way impaired its effect? A. Why, of course; I guess it is pretty much all gone; I guess it is frittered all away.

Q. Won't you state to the Committee the subsequent action of Judge Barnard in connection with that injunction? A. Well, of course that injunction covered pretty much the whole ground, so that it brought the city to about a dead lock; nothing could be done, and whenever an emergency arose Judge Barnard invariably—for instance, you take the loan that was made through Belmont, fifteen millions of dollars, a portion of which had been paid; a portion of the bonds had been delivered and the money received. This restrained Mr. Connolly from doing anything further on the subject, and I think an application was made to Judge Barnard for relief in that respect, to enable them to carry out the provisions of that agreement.

By Mr. CURTIS :

Q. Who granted it? A. Judge Barnard. I think he modified the injunction so as to allow the fulfilling of that contract with Mr. Belmont. I am merely citing an instance.

Q. Will you state whether any action of Judge Barnard, by way of modification of that injunction, has to any extent interfered with and embarrassed or hampered proceedings to procure the return to the city treasury of moneys which had been abstracted from it by prominent men connected with the city departments? A. The granting of the injunction?

Q. No, sir; whether any subsequent proceedings on the part of Judge Barnard, modifying the injunction, has to any extent embarrassed such proceedings? A. I am not conscious of it; I don't recollect, or I don't know that such was the case.

Q. Have there not been modifications of that injunction in the interest of Mr. Tweed or Mr. Sweeney, or which operated to assist them either directly or indirectly? A. I don't recollect anything of that kind.

Re-cross-examination, by Mr. CURTIS :

Q. Do you understand that Judge Barnard granted that modification of the injunction in relation to the loan negotiated with Mr. Belmont? A. Well, he restricted the Comptroller from doing almost anything, and it occurred to me that as Mr. Green afterwards fulfilled that agreement, that it was through Mr. Barnard's modification of the injunction, that prevented the Comptroller from doing pretty much anything.

Q. Do you understand that Judge Barnard granted the modification of the injunction in that particular? A. Well, if it was granted he must have granted it,

Q. Why? A. Because the case was before him.

Q. Are you not aware of the fact that it was granted by another Judge, and not by Judge Barnard? A. No, sir.

Q. Your impression is— A. My impression is, it was granted by Judge Barnard, but I may be mistaken.

Q. Are you aware of the fact that Judge Barnard never granted but one modification of that injunction? A. No, sir; what was that?

Q. Paying the police, the lamp and gas people, and the laborers—croton water? A. I know he granted—of course it is so long ago—the thing was all mixed up, and I know that the injunctions were modified.

Q. Was that made on the application of Mr. Comptroller Green—that modification? A. That I can not say, sir; my impression is that it was, if it was granted at all.

Q. Were you present in Court when it was granted? A. No, sir.

Q. Did you, at the time, take notice of the ground of what Judge Barnard said in regard to it? A. Well, it occurs to me now that Judge Barnard, in granting a modification of the injunction, coupled it with the necessity of Mr. Comptroller Green's name being affixed to all the bonds that were to be issued in the fulfillment of that agreement.

Q. Which agreement? A. In the fulfillment of the contract for the sale of the bonds.

By Mr. TILDEN :

Q. Agreement with Belmont? A. Yes, sir; and for that reason I think that he must have granted a power to issue the bonds, that Mr. Green was precluded from doing, by the operation of the injunction.

Q. Are you not aware of the fact, and did you not know it at the time, that when Judge Barnard granted the modification of the injunction permitting the Comptroller to pay, or to raise the funds for paying the laborers that were employed on the Croton Water Works, people employed on the gas lights, &c., in the city, that he expressly stated that he would grant no further

modification of the injunction, and that he granted that from the necessities of the case? A. I don't recollect that.

Q. You were not so informed at the time? A. I don't recollect that; no, sir.

Q. You have no personal knowledge of what the action of the different Judges on that injunction, after it was originally granted, was, have you? A. No, sir; I don't recollect them, I have no doubt that if there were any other than I have stated, I probably noted it, but it passed, like a good many other things, from my mind.

JOHN W. VAN VALKENBURG, a witness, being duly sworn, testifies:

By Mr. STICKNEY:

Q. You were Superintendent of the Albany and Susquehanna Railroad Company in August, 1869, I believe? A. Yes, sir.

Q. Do you remember the morning of the 7th August, when Mr. Fisk and Mr. Courter came to Albany to take possession of the road? A. Yes, sir.

Q. You saw Mr. Fisk at the time, or a moment after, he came to the railroad office? A. Yes, sir.

Q. State what took place and what Fisk said? A. It was in the morning, about 8 o'clock; when he came into the office I was in the water-closet; he came up—

Mr. CURTIS:

Mr. Chairman, may I suggest to the Committee to consider how far what occurred there in the absence of Judge Barnard is a subject of consideration here?

Mr. STICKNEY:

It will take less time to hear the testimony than to discuss it.

Mr. PRINCE:

We have gone so much into this matter that I think we may as well finish it up.

Mr. CURTIS:

I do not think that we have gone into matters that occurred in Albany not in the presence of Judge Barnard.

Mr. PRINCE:

I think that you will recollect that on the first day the question of what occurred at Albany was very largely gone into. I think we may as well finish it.

Q. Go on and state what occurred there after you saw Mr. Fisk? A. I went from the hall to the Treasurer's room, and when I opened the door I met Mr. Fisk; at that time I did not

know him, but I met a gentleman, who was a stranger to me, and I asked him if he had any business to transact there. He said, "My name is James Fisk, Jr.," and he said, "I have come here to take possession of this road and to take possession of this office." He said he had come here by the order of Judge Barnard, who had appointed himself and Mr. Courter Receivers. I said to him, "Mr. Fisk, Jr., if that is your name, I am here by the order of Mr. Pruyn, who has been appointed Receiver by order of Judge Peckham, and I am here in possession of the road and in possession of the office, and I propose to keep possession." He had a little cane in his hand, and he swung it and said, "This is nothing unusual; this is my twenty-fifth or twenty-sixth raid, and I propose to make it successful;" and he began to walk around behind the desk in the Treasurer's room. I followed him round and said, "Mr. Fisk, if that is your name, I mean business in regard to this matter, and if you have got any business to transact here I am here to hear it; but if not, I want you to leave the office." He said that he would take possession of the office, and that he would do it if it cost him a million of dollars. He said he had a great many men—I do not know how many, but 100 men I think he said he had. I told him that if he hadn't any business he had better get out, and I made a rush for him, and we had a square tussle—we had a turn. One of my private detectives, connected with the road, came over the counter; it was something like this [pointing to the table], and we had a place here to pay upon. This police officer came to my rescue, and Fisk halloed, "Come in, boys." He had some five or six "roughs," that he had brought up, hard-looking fellows that he had brought up from New York.

Q. Fisk? A. Yes, sir. He halloed to his boys to come in, and they came in there and my men came in, and the Directors came in the room, and we had a regular tussle to see who would get the best.

Q. Who got the best? A. We put them out.

Mr. CURTIS:

Q. What time of the day was this? A. About 8 o'clock in the morning.

Q. What day? A. It was Saturday.

Q. Saturday, the 7th? A. Saturday, the 7th.

Q. You say that you then claimed to be in possession of the road, holding it under Mr. Pruyn, who was appointed Receiver by Judge Peckham? A. Yes, sir.

Q. This was at 8 o'clock in the morning? A. Yes, sir.

Q. Do you know when Mr. Pruyn had been appointed Receiver? A. He was appointed Receiver the night before.

Q. By what order? A. He had been appointed Receiver by—well, by an application I made myself.

Q. Where was the order signed by Judge Peckham appointing Mr. Pruyn Receiver that evening? A. That I do not know.

Q. Do you know at what hour it was signed that evening? A. It was signed about ten o'clock; I think it must have been not far from that hour, for the reason that I was in Mr. Smith's office when the papers were made out, and Mr. Smith left to go to see Judge Peckham, and I judge from the time he was gone and came back with the papers signed; Mr. Pruyn then put me in possession of the road; I went down to the office that night, and took possession.

Q. Under your application for Receivership the night previous to Fisk coming there? A. Yes, sir.

Q. Did you see the order which was signed by Judge Peckham, appointing Mr. Pruyn Receiver? A. Yes, sir; I saw the order.

Q. When did you see it? A. I saw it that night; the night of the 6th, I think it was.

Q. Was the County Clerk's office open that evening? A. That I could not say.

Q. Was the order filed in the County Clerk's office that evening? A. That I do not know.

Q. Do you know when it was filed in the County Clerk's office? A. I do not.

Q. Was the County Clerk's office opened in Albany before 9 o'clock on the Saturday morning? A. That I do not know.

Q. Do you know when it was usually opened? A. I do not; I do not know their opening hour.

Q. You do not know, then, that that order had been filed in the County Clerk's office at the time when Mr. Fisk demanded possession of the road, do you? A. No, sir.

Q. Do you not know that it had not been filed in the County Clerk's office at that time? A. I do not.

Q. You never paid any attention to that subject, did you? A. Not particularly.

Q. You never enquired? A. No, sir; not that I know of.

Q. Have you ever heard it said at Albany that that order had no effect until it had been filed in the County Clerk's office? A. I do not know that I heard anything of that kind discussed.

Q. You never heard that question? A. Not to my knowledge.

Q. You and Mr. Pruyn acted on the assumption that that order was in force as soon as it was signed? A. Yes, sir, I did; I cannot say whether Mr. Pruyn did.

Q. You understood that he acted on that idea? A. I suppose that he did.

Q. Who was your counsel in obtaining that order from Judge Peckham? A. Mr. Henry Smith.

Q. You were complainant in the case? A. Yes, sir,

Q. Was the order granted on any other affidavit than your oath to the complaint? A. I do not think it was.

Q. Or any other proof of any kind for the necessity for a Receiver, except your oath to the complaint? A. I think that that was all, to my knowledge.

Q. When Fisk came there, and first demanded possession, he told you that Judge Barnard had appointed him and Mr. Courter Receivers of that road? A. Yes, sir.

Q. That was 8 o'clock in the morning, or thereabouts? A. Yes, sir.

WILLIAM FULLERTON, a witness, being duly affirmed, testifies:

Mr. CURTIS:

I understand that the prosecutors do not call Mr. Fullerton, though he has been sent for by them and is offered to us as a witness. I do not think it makes any material difference whether he is called by them or by us, but, as I understand they do not propose to call, I propose to call him as a witness on our side.

Mr. PARSONS:

I think it is scarcely fair to state that we sent for Mr. Fullerton and decline to examine him. We had received a note from Mr. Fullerton, stating that if he was to be examined, he desired that it should be to-day; we showed that note to Mr. Curtis, and we telegraphed for him that he might be here, but we did so with the express declaration, to Mr. Curtis, that we did not design to call Mr. Fullerton as a witness.

By Mr. CURTIS:

Q. You were counsel for the Pacific Railroad Co. during the pendency of the suit of Fisk against the Company, in which there was a Receivership granted and in which there were proceedings to open the safe at the time? A. I was not at the time of the opening of the safe. I had been, up to the Summer prior to that.

Q. Do you recollect when that suit was commenced? A. My best recollection is that it was sometime in 1868—certainly that is the year; I cannot fix the time.

Q. Was any sum of money placed in your hands by the Company to be applied in buying peace, temporarily or permanently, in that litigation? A. There was a sum of money placed in my hands, but whether I should regard it as by the Company or by one of the directors, might be a question. It is the same thing—it was one or the other.

Q. Was the amount \$50,000? A. It was.

Q. Had any proceedings in that suit, at that time, taken place before Judge Barnard? A. Yes, sir.

Q. What action had there been taken in the case? A. He had heard arguments of different kinds, I think. One I recollect particularly, was an argument on a motion to remove the case—I think that was made before him, to remove the case to the Federal Courts. I have that more distinctly in my mind than any other.

Q. You were invested absolutely, according to your own discretion, were you not, with the disposition of that money? A. I was.

Q. Were you in any way instructed, or was any hint given to you by any officer of the Company, as to how you should apply that? A. No, except in settling the case.

Q. Did any part of that money, at any time, pass from your hands into the hands of Judge Barnard? A. Never.

Q. So far as you know, was there any design on the part of the Company, or any officer of the Company who placed that money in your hands, that it should reach Judge Barnard? A. None at all.

Q. To your knowledge did it ever reach him indirectly? A. Never, directly or indirectly in any shape or form.

Q. Was it ever intended by the Company or any of its officers that any part of that money should ever reach him directly or indirectly? A. Not as made known to me by anything that was said or done. I do not know how they should entertain such an idea.

Q. Was any portion of it ever paid to any person that you had any reason to believe paid over any part of it to Judge Barnard? A. Never. I never had the slightest idea that a farthing of that money ever reached Judge Barnard in any way or form.

By Mr. PARSONS:

Q. In what shape was that money received by you? A. In bills.

Q. From whom did you receive those bills? A. (After hesitating.) I cannot say.

Q. Where did you receive the bills? A. In the office of the Union Pacific Railroad Company. The reason I cannot say from whom I received the bills is, that although I was there very frequently during that litigation, the officers and attachées of that institution were so numerous that I do not know their names. I should be inclined, without being able to speak his name, to say that it was from the Assistant-Treasurer. If I ever knew his name I do not recollect it.

Q. Are you quite sure it was not received from Mr. Cisco? A. I do not think it was, but it is barely possible; I may be mistaken. That is not my recollection now.

Q. With whom had you the conversation from which resulted the receipt by you of that \$50,000? A. Mr. Bushnell, I should

think, was the person. He was one of the Directors of the Company.

Q. Were there other officers or parties interested in that Company with whom you conversed on the subject prior to your receiving the money? A. There was something said to Mr. Cisco in regard to it, and perhaps to one or two others present at the time, although I am not prepared to state how many, nor who were there.

Q. Do you remember a conversation you had with Mr. Charles Tracy on the subject? A. I can remember the substance of it.

Q. How many conversations did you have with Mr. Charles Tracy? A. I think Mr. Charles Tracy went with me to Mr. Cisco—into his private office; and whatever was said there was said in the presence of Mr. Tracy, and I believe Mr. Tracy participated to some extent in the conversation. I do not know that I had any other conversation with Mr. Tracy particularly about it. I may have had, but, if so, it has escaped me.

Q. Do you remember that, in the first conversation you had on the subject with Mr. Bushnell, he informed you of a conversation he had had immediately prior to your conversation with Mr. Fisk? A. No, sir, I do not remember it now.

Q. Do you remember any conversation with Mr. Bushnell prior to the receipt of the \$50,000, in which he informed you what had been told him by Mr. Fisk on the subject of an injunction and Receivership against the Union Pacific Railroad Company? A. No, sir, I do not remember anything about it.

Q. You have no recollection on the subject either way? A. Either way.

Q. Can you recollect the conversation that you had with Mr. Bushnell when the arrangement was made in reference to the \$50,000? A. I can remember, substantially; the first conversation I had with Mr. Bushnell, but that did not lead to the giving me the money, although he offered it to me at that time. I refused to take it then. The money was given to me in Mr. Bushnell's absence somewhere—Newport, I think it was. I recollect it was hot weather, and he was away at a watering place.

Q. Saratoga? A. Perhaps it was.

Q. Do you recollect the conversation you had with Mr. Bushnell, at which the arrangement was made in pursuance of which that \$50,000 was given to you? A. No, sir; I cannot definitely, because the arrangement under which it was given was in part made with me, and in part made, it seems, at a time when I was not present, and was made with some officer of the Company—I presume by himself, in some way or other.

Q. With whom, other than Mr. Bushnell, was any arrangement with you made? A. After Mr. Bushnell and I had the conversation here, he left the city and went away. I had ascertained that it might be worth while for me to take this \$50,000, and I went and asked whether Mr. Bushnell's arrangements had

been made so that I could get the \$50,000 in his absence from the city. What was said in reply to that I do not know, but I do know that, after a lapse of some day or two, it was said it was all right and I could have it, and it was given to me by some person whose name I cannot now recall.

Q. State what you do recollect of all the conversation on the subject you had with Mr. Bushnell prior to the receipt of the \$50,000. A. Mr. Bushnell sent for me, if I recollect aright, during the progress of this litigation, when things looked adversely, and wanted to know if something could not be done to settle it; if anything could be done by which they could be released from their embarrassed condition, growing out of the litigation. I told him that I did not know; that I thought probably something might be done; that I did not believe Mr. Fisk expected in the end to succeed in that litigation, being familiar with all the facts in the case. He said it would be worth \$50,000 to him personally if that litigation could be arrested, and the Company permitted to go on with its business. I said I thought it was worth trying. He said, "I will give you \$50,000, and you can go and try." Those were the words which he used, in substance. I said, "No, it is not worth while to do that yet. Let me cast about to see whether I can do anything towards settling it." I did go to work and make an effort, and I thought I had failed. I could not make any headway, and I reported that I thought there was no use to try any further; that I could not succeed in what I had undertaken. In the meantime Mr. Bushnell went away. I suppose I must have communicated with Mr. Bushnell, because afterwards I changed my mind, and thought an effort might be made to settle that case in some way. At all events he was communicated with, and the \$50,000 was afterwards given to me.

Q. Is that all you recollect of what transpired between Mr. Bushnell and yourself? No, sir, not exactly all. There was some talk about the merits of the controversy—some talk about—

Q. I mean as to the use to which this \$50,000 was to be put?

A. Yes, sir, that was all the conversation as to the use of the \$50,000.

Q. You have used the expression "settle the suit." Do you mean that it was said between Mr. Bushnell and yourself that this \$50,000 was to settle the suit? A. It was to be used in my discretion, if I could get it settled—if I could settle the suit and get them out of trouble.

Q. You did use the money? A. Yes, sir.

Q. You didn't settle the suit? A. If you want me to go into all the particulars, I will do so.

Q. Did you settle the suit? A. I thought I did.

Q. Did you say that it was said in the conversation that there was a necessity for the litigation to be arrested? What do you

mean by arresting the litigation? A. I say that it was disastrous to the success of the Company. They had a vast project on hand, a large number of men employed, and they were paying out vast amounts of money, and this thing was an obstruction and a constant source of annoyance to divert the attention of those who were carrying on the enterprise, from their legitimate business.

Q. Do you mean by arresting that this obstacle should be removed? A. It was to get rid of the litigation, if it was a possible thing.

Q. What you mean to state is, that the \$50,000 was to be used in relieving the company from the litigation? A. You may use whatever term you like, but it was to disembarass the Company.

Q. From what? A. From the pressure on that company.

Q. Do you mean get rid of the litigation? A. Get rid of the litigation.

Q. You also used the expression that there was an urgent necessity for the Company to be relieved from its embarrassed condition. What did you mean by its embarrassed condition? A. Just what I have explained. It was embarrassed by having the attention and energies of those who were prosecuting its affairs diverted from the legitimate object of the corporation.

Q. Had any injunction been granted at that time? A. I do not remember whether there had been. It may seem strange that I cannot remember, but certainly I cannot. I was so intimately connected with the Rock Island controversy and others where injunctions were very frequent, that I cannot recall that an injunction had been granted in this case.

Q. Had a Receiver been appointed? A. No, sir.

Q. What had been the embarrassments—the mere fact of a law suit? A. There were orders for an examination of the Directors; one to-day, and another Director to-morrow, if I recollect aright.

Q. At that time? A. I think so.

Q. Are you quite sure that that was not long after? A. No, it could not have been long after, because I didn't participate after that, and I did participate in the examination of these Directors.

Q. Will you say if you cannot recall whether, at that time, there had been any proceedings against the Directors, or any threat of proceeding against Directors? A. It seems to me there had been proceedings to examine Directors.

Q. Can you be sure about that? A. Preparatory to making motions.

Q. Can you be sure about that? A. I would not be sure about it, at this lapse of time.

Q. Had any motion at that time been made upon notice in the litigation? A. I should think so.

Q. Can you speak with confidence on that subject? A. I

should speak with great confidence were it not for the shape of your questions, which imply that I may be in error about it.

Q. Can you explain then what it is to which you refer as the "embarrassments of the Company," which they were to obtain relief from by the use of this \$50,000? A. It was to settle the suit.

Q. Is that all? A. That is all I mean. I do not know at that time whether there was any injunction or not, but I do recollect that examinations were going on of the Directors or Trustees, whatever they were called, preparatory to some motion in the Court.

Q. Are you as confident about that as you are of your recollection of what transpired between Mr. Bushnell and yourself?

A. I cannot compare my recollection upon different subjects in that way.

Q. You also used the expression that at the time an arrangement was made for the use of \$50,000, "things looked adversely." State what you meant by the expression "adversely?"

A. Perhaps that was an unfortunate word. The litigation was going on, and it was embarrassing the Company. They were to succeed in the end, but in the meantime it affected the road adversely.

Q. They had a good defence? A. Yes, sir.

Q. And you so advised them? A. Yes, sir.

Q. And the other counsel so advised them? A. Yes, sir.

Q. Had there, at that time, been any unusual or extraordinary proceedings you can now recall in that litigation, either by way of motions for, or orders of injunction, or appointing Receivers?

A. I think there must have been such proceedings for this reason, that I do not think I had any connection with that controversy afterwards at all, and I did have connection with such motions.

Q. Was not this arrangement in respect to the \$50,000 made within three days from the commencement of the suit, and before any proceedings had taken place in the suit, with the exception of the service of the preliminary papers? A. I should say certainly not, only your question is put to me in a way that implies I may be mistaken. My memory is not a good one. If there is anything to refresh my recollection I can tell.

Mr. TILDEN :

I think the witness is entitled to have the paper to refresh his recollection.

Mr. PARSONS :

This would not enable him to tell the day he received the \$50,000.

Mr. TILDEN :

It might by some association.

Q. Have you any such recollection as enables you to say, with any confidence, that you did not receive the \$50,000 within a week of the commencement of the suit? A. I do not think I did.

Q. Are you positive? A. I will speak as positively as I can, without saying positively. I have no idea that it was so soon after the commencement of the action.

Q. Are you very confident that there was a feeling on your part, and that of others in the interest of the Company, that things did look adversely to them, and that there was a prospect of embarrassment to the Company? A. Not so far as the final result of the action was concerned.

Q. I mean adversely as far as affecting the pecuniary interest of the Company? A. There was a prospect of a long and tedious litigation on this subject.

Q. Was that all? A. The Company thought they would probably get the worst of it.

Q. How were they to get the worst of it if they had a good defence? A. They thought the Court would be against them on the motions.

Q. Who was the Court? A. I cannot speak of others than Judge Barnard. They said that Judge Barnard was influenced by Fisk, and that they didn't think they had a chance in the case.

Q. Did you permit them to pay \$50,000 under any such misapprehension? A. I didn't permit them.

Q. Did you participate in the payment of the \$50,000 under such a misapprehension?

Mr. NILES :

Do you mean apprehension or misapprehension?

Mr. PARSONS :

I speak of what I suppose was his view under the circumstances.

A. These were the circumstances existing at the time when the \$50,000 was paid.

Q. Do you mean that there was an apprehension, on the part of those for whom you were acting, that the Company would be seriously injured by the results of the motions that were to be made before Judge Barnard? A. This was the tenor of the conversation : Here was a Company engaged in a large enterprise, using a great deal of capital, which had an object to accomplish within a given time, and they were making a great effort to accomplish it at an early day, but, they said, here was an individual who had no legal or equitable claim against them, who had commenced these proceedings, and the Company thought that Mr. Fisk had an advantage over them, in having the ear of the Court.

Q. The ear of Judge Barnard? A. Yes, sir. I think he was presiding at the time, but whether in all the motions, I do not know.

By Mr. TILDEN :

Q. Was not the first motion granted by Judge Cardozo? A. Perhaps; although I don't remember.

By Mr. PARSONS :

Q. Are you quite sure that Judge Barnard's name was not mentioned in connection with the discussion upon the subject of the payment? A. Without recollecting positively that it was mentioned, I should still be under the impression that it was.

Q. Was it under that apprehension that the arrangement was made in reference to the \$50,000? A. I have told you exactly what took place. I have told you the facts, and you must infer what apprehension they had. I told you what was said.

Q. Did you so understand it at the time, that it was that apprehension which induced the Company to pay this \$50,000? A. It was an apprehension that they were going to have a long and serious litigation on this subject. It had already been expensive. It must have been commenced longer before than the time you speak of, because I recollect perfectly well about the payment of counsel fees. That is a thing I would not probably forget.

Q. That sometimes happens at the beginning of a suit? A. Yes, sir; but they do not come very thick at the commencement of the suit.

Q. Do you mean to say that the only apprehension the Company had was of a long and tedious litigation? A. A long and tedious and expensive litigation, and the fact that they thought they would be unsuccessful in some of their motions.

Q. Even although they were right according to their judgment and according to your advice? A. As to what was going on at the time, there is no doubt but what the plaintiff had a right to what he was then getting—that is, the orders for the examination of the Directors founded on the allegations that they wanted the evidence for some kind of motion, I cannot tell what it was. Those orders were coming thick and fast, and, if I recollect aright, the examination was going on from day to day. My whole time was taken up wholly with it, and Mr. Charles Tracy's time was taken up wholly with it, and the whole force of his office was taken up with it. We were going on day by day. I can't tell now what the subject of the examination was, but it was to know the assets of the Company and the amount of money that it had received, and, I think, some connection it had with the *Credit Mobilier*.

Q. Have you any recollection that any such proceedings were pending at the time the arrangements were made for the \$50,000? A. I certainly think they were pending.

Q. Do you not remember that Mr. Bushnell told you that he had a recent conversation at the Fifth Avenue Hotel, with Mr. James Fisk, when Mr. Fisk disclosed to him the fact that he was about to obtain from Judge Barnard the appointment of Receiver and an injunction and that the papers had been prepared, and had been signed by the Judge? A. I certainly have no recollection of that.

Q. Can you state that that did not transpire? A. I cannot state that it did not transpire, but it does seem to me that this examination would recall it if I had ever heard such a thing, but it does not.

Q. Your recollection is at fault in respect to it? A. It is at fault. If I ever heard such a thing it is obliterated from my recollection.

Q. What was done with the \$50,000? A. After what I have said, that it did not go to Judge Barnard either directly or indirectly, I submit to you whether you will ask me the question. If the Committee insist upon it, I shall tell.

Q. We have no choice but to insist upon it? A. I prefer to take the opinion and sense of the Committee. If they say so I shall tell, but I do not choose to tell without. I do not think I ought to tell without their instructions.

Mr. NILES (to Mr. PARSONS):

Do you claim from the information you have received that you would be able to trace any part of this money into the hands of Judge Barnard or to any party who had the reputation of having the ear of Judge Barnard?

Mr. PARSONS:

This transaction can only be investigated upon such information as can be communicated by Mr. Fullerton. It is very clear that we cannot know any more of the transaction without his information.

Mr. NILES:

With this information, I ask you, if you suppose you may bring the payment of the money to Judge Barnard under this charge in any way.

Mr. PARSONS:

I do not think we are called upon to say even that. Mr. Fullerton has stated that neither directly nor indirectly did any of this money go to Judge Barnard. It is quite possible that Mr. Fullerton may not know to what use this money was put.

THE WITNESS:

I do.

Mr. CURTIS :

I would like to make a suggestion to the Committee—

Mr. TILDEN :

Make your suggestion, but we do not want to hear any argument or any lengthy discussion.

Mr. CURTIS :

I do not mean to enter upon any discussion, I only meant—

Mr. NILES :

I would be glad to hear any thing that would throw any light on this subject.

Mr. CURTIS :

Previous to Mr. Fullerton being called here, there was a good deal of conversation between Mr. Parsons and myself. Before our calling him, Mr. Parsons had received a note from Mr. Fullerton saying if he was to be examined in this matter, he desired to be examined to-day because of his engagements necessitating him to go out of town. I put Mr. Fullerton on the stand—they declining to call him—upon what I supposed was a distinct understanding between Mr. Parsons and myself and Judge Fullerton before he was called, that the examination should be limited to an inquiry whether Judge Barnard had ever received, either directly or indirectly, any part of this money. It was upon that understanding that I called him. I should not have called him but for that understanding.

Mr. PARSONS :

I really do not see how Mr. Curtis can labor under so great a misapprehension. There was no conversation between Mr. Curtis and myself which would justify any such impression on his part. I said to Mr. Curtis that I had no intention of examining Mr. Fullerton, and I handed Mr. Curtis the note, that he might be informed that Mr. Fullerton was going out of town, and if he desired his testimony that it could be had. Mr. Fullerton states in the note that he is perfectly willing to communicate to Mr. Van Cott, Mr. Stickney and myself, without being called upon, what was done with the money.

Mr. NILES :

As far as I am concerned, if there is any fault, I do not believe that Judge Barnard is alone in fault. If it should turn out that the money went to a source from which it was very clear it never went to any other party, I should be entirely satisfied that it never went to Judge Barnard, so that in that view it is important for us to try to get at what the exact truth is. On the other hand, it may perchance be, for all I know, that it went to a source

from which we would be bound to infer that very likely it did, or it might enable us to call men to prove that it did. Either in the one aspect or the other, so far as I am concerned, and I speak for myself alone, it is important.

Mr. CURTIS :

I only made the statement for the purpose of justifying myself to Judge Fullerton and to the Committee for having called him. I have no objection, as representing Judge Barnard, to Judge Fullerton stating anything that was done with that money. It is a matter with which we have no concern. I think Judge Fullerton went on the stand with the full understanding that he was not to be asked what he did with the money.

Mr. PARSONS :

I must disclaim any understanding of that kind, or anything either said by me or by anyone else, which would justify any such impression. I desire to say this, however, that there is no Court which would in my opinion consider the question which we put to Mr. Fullerton, as not a suitable question upon cross-examination, he being brought here for the purpose of establishing that which is claimed to be made out by his direct evidence, that Judge Barnard, neither directly or indirectly, on the statement of Mr. Fullerton, received any of this money.

Mr. NILES :

I say that it may possibly disclose a state of facts, showing that Mr. Fullerton could not know that it did not go indirectly to Judge Barnard, and it might disclose a state of facts that would wipe out all suspicion to my mind, that it did.

(The Committee here held a consultation among themselves.)

Mr. NILES :

We think that the question ought to be answered, that it may leave no suspicion.

Mr. TILDEN :

We understand that Judge Fullerton does not wish to answer, by reason of some obligation of privacy.

THE WITNESS :

I am perfectly willing to answer that I paid the money to James Fisk, Jr.

Q. Will you state the circumstances? A. Yes, sir. The second time, when I came to the conclusion to see if I could settle the case, I sought an interview with Mr. Fisk, and I obtained it through a gentleman by the name of Belden—William Belden. The interview took place, if I recollect aright, in the office where Mr. Belden was. There followed a long conversation between Mr. Fisk and myself about this law suit.

By Mr. TILDEN :

Q. On New street? A. It was a little street on the East side, between Broad street and Nassau; I could not tell exactly where it was.

By Mr. PARSONS :

Q. At the office of William Belden? A. I think it was at the office of William Belden; he may have been in partnership with him; I do not know whether he was then in partnership with him or not; I knew Mr. Belden at the time, and I got the interview through him. The conversation was in regard to the merits of this controversy, and I said to Fisk "You did not expect to recover in this suit; you do not expect to succeed. I know all about the circumstances of the stock subscription, and in the end we must succeed against you, and what is the use of carrying on a long litigation. Cannot the thing be settled?" I cannot begin to state the conversation that followed, because of the length of it. But he agreed to take it and put a stop to the litigation. But he would not do it so that it could be known. He said that his pride was up, that he had got the stock and that he was not going to give up so as to have it known; but he said he would take the \$50,000, and we should never be troubled after that. That was in August or July, 1868.

Q. What papers did you take from Mr. Fisk, to show that the litigation was to be stopped? A. None at all, not the scratch of a pen. It was a mere matter of honor between us. He would not give any paper, and I said I would not say anything about it. He said it should be a matter between him and me, and that this thing should not go on any further. I said that we were about to remove the case to the Federal Court, and that he could not recover there.

Q. And the understanding then on your part was that he was to receive \$50,000? A. He did receive it.

Q. And on his part that that would be the end of the litigation, although he would not discontinue the suit.

Q. That was to be practically the end of the litigation? A. It was to be practically the end of the litigation, and it was practically the end until the March following.

Q. The arrangement was a confidential arrangement? A. A confidential arrangement.

By Mr. NILES :

Q. You knew about the revival of the litigation, and the appointment of the Receivership? A. Yes, sir.

By Mr. PARSONS :

Q. Did you go to Mr. Fisk then and call to his mind this confidential agreement? A. I did not for this reason—

Q. Did you go to the company and tell them? A. No, sir;

and for this reason, that in the month of March, when this thing occurred, I had about as much trouble as any one man could stagger under. I was then getting ready for my trial, and I do not know but the trial had commenced. At all events I paid no attention to it at all. For two weeks my trial was on in the United States Court. Whether it had commenced or not, I do not know. At all events I recollect that my attention was devoted to the preparation of the case.

By Mr. TILDEN :

Q. At the time of the renewal of this controversy, you were not taking any active part or any part in it as counsel of the Company? A. Not the slightest. After making that arrangement, I left the city of New York, telling Mr. Bushnell in one interview, that I guessed he would not be troubled with the case any more, and telling Charles Tracy, without telling him the circumstances of what had been done—they did not ask me—that the litigation was practically at an end. I went out of town and remained until late in the Fall.

Q. You remember about the first of March, I came into the case in the Federal Court? A. Yes, sir; I was not in it.

Q. I ask you whether I ever met you in the case at all, except in one occasion, when I called to talk with you about the affidavit we desired to make; whether we ever met in consultation? A. I don't remember that.

Q. We never did? A. I do not think we ever did; and if you ever did ask me about the affidavit, it has escaped my recollection. There was a good deal took place in the world at that time that I don't remember about; I was in a state of excitement about my own affairs.

Q. You had practically left the case some months previously? A. Nine months previously.

By Mr. NILES :

Q. Did not any one of the parties come and ask you why this thing was going on, and what it meant? A. No, sir, never; because my case came on the last of March, or the first of April, and continued some two or three weeks, and when the case was over, I was exhausted, and went out of town, and did not come here until after the election the succeeding Fall.

By Mr. PARSONS :

Q. When was it that the preparation for your trial began? A. I do not remember. The preparation began very early.

Q. When did you become engaged in that preparation? A. I did no law business of any consequence for a year prior to this case.

Q. When was that case tried? A. It was tried some time in March or April, 1869.

Q. Was not this very transaction within a year prior to March, 1869 ; during 1868 ? A. It was in July, 1868, or August.

Q. Then you were at that time attending to law business ? A. Yes ; I was attending to that business at that time. Very little law business did I do for the year prior to that time.

Q. Was the money paid over to Mr. Fisk in the same bills you received ? A. The same bills I received from the Company.

Q. Did you not have knowledge of the resumption of the litigation by Mr. Fisk ? A. I heard of it.

Q. It was notorious through the papers ? A. Yes, sir.

Q. During what length of time did that litigation continue after it was brought to your notice ? A. I do not remember.

Q. Was it not a very considerable length of time ? A. Probably it was ; I paid no attention to it.

Q. Did it not cross your mind that it was in violation of the arrangement between Mr. Fisk and you ? A. It did.

Q. And you didn't communicate with the Company ? I did not see one of them, and I did not communicate with them, nor did they with me.

Q. The arrangement would have been an entire defence to a subsequent proceeding ? A. I suppose it would have been.

Q. Did you not communicate this fact to those who had been your clients ? A. No, sir.

O. Never to any person ? A. No, sir.

Q. You had been paid as counsel to bring about that arrangement ? A. No, sir.

Q. Generally ? A. I had a retainer from the Company long prior to that.

Q. Were you not paid by your clients all your claims against them ? A. No, sir, I was not. I never made any claim that I was not paid. I thought that my services were worth more than I received.

Q. Did you make any claim ? A. I did not, for the reason that when this litigation was resumed I was not in a condition to render them any service, and didn't render them any service, and never presented a bill.

Q. Do you mean to say that although you alone had made the arrangement for your clients, and had been paid for your services, which arrangement furnished a complete defence to the litigation, that you did not communicate it to your clients after the litigation had commenced ? A. I mean to say—

Q. Let me go on and finish my question. A. I know what the question is, and it reflects upon me. You will have some kind of an appreciation of the condition I was in if I were to—

Q. I desire to give you an opportunity to make such a statement as will make the whole explanation consistent ? A. I would as soon have left a plank in the middle of the East River

and swum ashore to transact business on shore as to have omitted my case and engaged in that controversy of the Union Pacific Railroad Company.

By Mr. NILES :

Q. I understand that you were tried just about the time of this controversy, and you were triumphantly acquitted, were you not at the conclusion of the trial? A. Yes sir. I did not know what the condition of the controversy was then. I have no recollection of the condition it was in at the time—the controversy of the Union Pacific Co.

Q. You did know that just about that time their safe was opened, a Receiver appointed for the company, and the company driven out of the State of New York and compelled to go to Boston? A. I never heard of that. I have a recollection of hearing that the safe was opened, when my trial was going on.

Q. You heard that a Receiver was appointed? A. I suppose I must have heard it.

Q. You heard that they had moved to Boston? A. Yes; I heard that.

Q. Do you mean to say that after you got safely? A. I mean to say that I never communicated with them from first to last on the subject. That is what I mean to say.

Mr. PRINCE :

I do not see that there is anything more.

The WITNESS :

I went away. I was exhausted and my health was broken up.

By Mr. PARSONS :

Q. Did you pay the \$50,000 the same day you received it? A. No, sir.

Q. How soon after? A. I don't remember how long after. There was an interval of some days.

Q. Where did you pay it? A. I paid it at the office of Mr. Belden.

By Mr. TILDEN :

Q. In one payment? A. Yes, sir, one payment.

By Mr. NILES :

Q. Who was there? A. Without being able to say that Belden was told all this, I have an impression that he understood.

Q. Was he present at the time of the payment? A. I do not know that he was at the payment, but he was present in the room.

Q. Who was present in the room at the time? A. Nobody, unless he was. It was a private room. Mr. Belden will undoubtedly recollect, and can tell what was going on, and whether

he was present when the payment was made. Undoubtedly he knows.

By Mr. PARSONS :

Q. How long did the \$50,000 remain in your possession before it was paid to Mr. Fisk? A. There was an interval of some days.

Q. A week? A. Probably a week.

Q. More than a week? A. I would not be able to say.

Q. What was done with the money in the meantime? A. I recollect perfectly well of carrying it in my pocket, and of putting it back in my safe, and taking it out again, and putting it in my pocket and putting it in my safe again.

Q. Was it in your physical possession or in your safe all this time? A. Yes, sir.

Q. In what denomination of bills was the money? A. I recollect that they were large, because the package was very light.

Q. Have you ever heard the transaction the subject of a conversation since, on the part of any persons, as to the use to which that \$50,000 was put? A. I never saw Mr. Bushnell afterwards until—I cannot say when.

Q. Did you then discuss this arrangement you had made with Mr. Fisk? A. I said that Fisk had been playing false with him.

Q. Where was that? A. I do not recollect.

Q. Can you tell when it was? A. It was some time. I went away immediately after my trial, and did not get back until after the month of November—until after the Fall election. I believe I was in Richmond during the election.

By Mr. NILES :

Q. Did you not have a controversy with or a complaint from the trustees of that Company in consequence of having received this \$50,000, and the litigation going on notwithstanding? A. Never.

By Mr. PARSONS :

Q. Did you learn that it was a subject of discussion at the last stockholders' meeting held in Boston, when Mr. Clark became President of the Company? A. No, sir, never.

Q. Or a Director's meeting? A. I never heard it lisped.

Q. When you had that conversation with Mr. Bushnell on the occasion when you told him that Mr. Fisk had played him false, was that all you said? A. That was all I told him. He didn't seem disposed to hear anything on the subject. He didn't court conversation with me on it.

Q. Did you convey to him the impression that the manner in which Fisk had played him false was in receiving that money and not standing by the arrangement he had made? A. I did not.

Q. Was your sole remark that Fisk had played false? A. That was the substance of the remark I made to him.

Q. Did he ask you to tell the particulars? A. He did not. He could have had the particulars any time from that day to this, but he never asked me in reference to it.

Q. Was the remark of such a character as to convey the information that the money had been paid to Fisk? A. You must judge of whether it was calculated to convey the information. I have given you the remark, or the substance of it.

Q. You didn't volunteer any information except what might be implied in that remark? A. I think I met him here at this house. I was here dining with some friends, and he was dining, but I am not sure about that; that is what occurs to me.

Q. Don't you remember that there was, on the part of those in interest in the Company, an understanding that you should make an effort to settle with Mr. Fisk, subject to the approval of Mr. Tracy? A. Never. I do not remember any such thing.

Q. Did you not state that on one occasion you went with Mr. Tracy to Mr. Cisco's office, and that the \$50,000 was the subject of conversation? A. Yes, sir.

Q. What was said in that conversation? A. All that was done or said at that time was to ascertain whether the arrangement had been made to have the \$50,000 forthcoming.

Q. What did Mr. Tracy gather from the conversation about the \$50,000? A. That \$50,000 had been talked of with Mr. Bushnell. I do not know how far he had learned the particulars. It was a confidential conversation between Mr. Bushnell and myself. Still, Mr. Tracy knew something about it. He knew enough to know that \$50,000 might be needed.

Q. For what? A. For the purpose suggested in the conversation between Mr. Bushnell and myself.

Q. Was it not the idea in such conversation as you had with Mr. Bushnell, or Mr. Cisco, or Mr. Tracy, that the money which was actually received by you was not to go to Mr. Fisk? A. The understanding?

Q. Was not that the impression communicated by you to them? A. No; I communicated no impression about it. I had then seen Mr. Fisk. I had not the money when I first saw him.

Q. What explanation did you furnish? A. Just as I have said before—that the \$50,000 was put in my hands that I might be able to use it.

By Mr. NILES.

Q. Why was it that you had this \$50,000 in your pocket or in your safe so long, when it was arranged that if the money was wanted to consummate the arrangement, you could go to Mr. Cisco and get it? Why did you run the risk of carrying it around in your pocket? A. When I went to Mr. Cisco the arrangement had been made. I had an interview with Fisk, and learned from him what I could do with it.

Q. Then after getting the \$50,000, what led to the delay of a week in paying it? A. I know Fisk was absent. Whether he was at Long Branch, going to and fro or not, I do not know; but he was not always in town when I wanted him. I sought my opportunity to get a communication with him as soon as I could after getting the money.

By Mr. TILDEN :

Q. Do you remember making an affidavit, in the Supreme Court cases, with respect to being present at the time the petition was presented, and a bond, to Judge Barnard? A. Yes, sir. Mr. Tracy and I were together in making that affidavit.

Q. Mr. Tracy, Mr. Charles E. Tracy and yourself? A. Probably. I do not remember Mr. Tracy's son, but I recollect Mr. Charles Tracy coming to me in regard to it.

Q. You don't remember seeing me on the occasion of making that affidavit? A. No, sir; I do not remember it.

Q. Do you remember seeing me at any time during the progress of that litigation? A. I certainly do not. Did I?

Q. No, I think not. A. I do not think I did. If I did it has escaped me altogether.

Q. I desire to develop that fact that we never met in the litigation. A. Not that I remember; although if you had told me that we had met I should not have disputed it, because I have got old enough to know that I cannot trust my recollection at all times.

Q. See if you can recollect whether you had an interview with me while you were busily employed in preparing for your trial, at the time you were asked if you could make such an affidavit? A. No, I do not remember.

Q. I remember that, but I am not a witness. I remember you were busy preparing for your trial at that time. A. Please tell me when that was.

Mr. TILDEN :

That was in April.

By Mr. PARSONS :

Q. Have you ever said anything to the effect, or heard anything to the effect, that this was substantially the way in which that \$50,000 was disposed of—that you went into a room, some other person being there; that \$50,000 in bills were placed on the desk or table which you turned from, and that when you turned again that money was gone? A. There is not a word of truth in any such suggestion, and the man who made it knew better.

Q. Be so good as to tell me who made the statement, and he knew better. A. My observation applies to a person as well unknown as if he was known.

Q. You don't quite answer my question, which was not whether that was a fact, or whether you ever made a settlement to that effect, but if you ever heard any statement to that effect.

A. Never at all ; nothing of the kind ever escaped my lips. I never informed any human being, until this day in your presence, what became of that \$50,000. I was never asked to explain it. I was perfectly willing to explain to those who had a right to know, if they asked me, but they never did ask me. I was under a solemn obligation, assuming that the arrangement was made as it was made, not to disclose it ; and that Mr. Fisk should not be humiliated with the story that he had settled this great controversy, wherein he had expected to win such laurels, and which created such a great impression.

Q. Since the termination of your embarrassments connected with your trial, has it never occurred to you, that there was a propriety and duty on your part in mentioning the circumstance to those for whom you had acted? A. If you purpose to try me instead of Judge Barnard, I have no objection to answering. I never did it. When I came back after the Fall election, in 1869, this controversy had blown over. There was nothing remaining of it that I knew of. My affairs were in a horrible condition. I had spent all the loose money that I had. My business had gone to the dogs, and I was looking out for my bread and butter. Perhaps, under the circumstances, I might have said something, but I did not do it. If it was wrong, you may judge me accordingly.

You must remember that I have been for a couple of years looking out for myself.

Q. I do desire to ask you this : didn't the litigation proceed continuously for the time of that transaction? A. No, sir.

Q. Are you able to speak with confidence on that subject? A. I think I am. I think you will find there was nothing of any moment done for a period of nine months ; I think I am right about that, because I was congratulating myself during that period that my efforts had been successful. I recollect perfectly well that it was a subject of reflection with me very frequently after that, whether I had not been sold out, or whether I would be sold out. I remember of congratulating myself, as month after month went by, that nothing had been done, and that it was all right.

Q. Down to what time did you congratulate yourself in that way? A. Until hostilities commenced. That was all I could do to settle them. It was the only way I could arrange matters of such moment, and I concluded it was the best thing to do about it, and I have no doubt that the Company realized millions as the result of that cessation of hostilities then.

By Mr. CURTIS :

Q. That money was paid Mr. Fisk, with a promise to you per-

sonally that he would end that litigation? A. That he would not prosecute that litigation any further.

Q. And except in the secrecy of the transaction, and the fact that no written paper passed between you as evidence of it, it was like any other payment of money to a litigant to discontinue the litigation? A. It was.

DAVID GROESBECK, a witness, being duly sworn, testifies:

By Mr. STICKNEY:

Q. State the circumstances under which your Albany and Susquehanna stock was taken from you by the Receiver, in the suit of Bush against the Albany & Susquehanna Railroad Co.?

A. I do not recollect the date—that is of no importance I suppose.

Q. No. A. A gentleman by the name of Fuller—William J. A. Fuller came into my office one afternoon about three o'clock, just as we were sending our boxes to the Bank, and handed me a paper which he requested me to read. Seeing that it was a rather lengthy document, and knowing him to be a lawyer, I asked him if he would tell me what it was. He said, "It is an order for your Albany and Susquehanna stock; you see I have been appointed Receiver, and I am here to receive it." Said I, "Well, suppose I should refuse to give it to you, what will be the consequences?" He said, "I am here with a writ of assistance. This gentleman is a deputy sheriff." Said I, "Well, is not that a rather extraordinary proceeding? It is the first I have heard of it." He said, "I think it is all regular." Said I, "Well, will you allow me to send out for my counsel, and take advice on the subject before going any further?" He said, "Well, I will wait a few minutes." So I sent my boy for Mr. Smith, of the firm of Martin & Smith, and he came in and handed him the document. He said, "This is a rather extraordinary proceeding, Mr. Groesbeck, and I hardly know what to advise you to do. I rather think you will have to give Mr. Fuller the stock." Well, I gave it to him and took a receipt for it, and he walked off with it. That is about the whole story.

Q. You had at that time a large amount of securities in your safe? A. Yes, sir; my boxes were standing there with three or four millions of securities—not mine, but I was doing a large business for Mr. Drew at the time, and I suppose there were four or five millions of securities in those boxes.

Q. How many shares of the stock did the Receiver take possession of in that way? A. From me, 900 shares.

Q. I mean Mr. Fuller? A. Yes, sir; 900 shares. The paper

covered 2,400 shares. They were owned by different parties ; I only owned 900 of the 2,400 shares.

By Mr. TILDEN :

Q. How many did you deliver to him ? A. 900 shares.

By Mr. STICKNEY :

Q. 900 of your own ? A. Yes, sir ; there were 2,400 shares of this stock—that is, forfeited stock, issued to myself and friends under a certain contract, of which I was the owner of 900.

Q. This paper called for 2,400 shares, and you had only 900 in your possession ? A. I was the owner of 900 shares out of the 2,400.

Q. I was enquiring to see whether you had other people's stock in your custody, which you delivered at the same time ? A. Not of that kind of stock.

By Mr. CURTIS :

Q. Was this full-paid stock that you delivered over ? A. Full-paid stock.

Q. You had received it from the Company directly ? A. Yes, sir.

Q. Issued to you by Mr. Ramsey, the President, and delivered to you from him ? A. I think it was sent to me by him, by Mr. Phelps, the Treasurer of the Company.

Q. How much had you paid the Company on it ? A. Twenty-five dollars a share.

Q. The par was \$100 ? A. Yes, sir.

Q. You spoke about that Company delivering on a contract ? A. Yes, sir.

Q. What was that contract ? A. In May, 1868—June, 1868, rather, I made a contract with the Albany & Susquehanna Railroad Co., for myself and friends to loan them \$560,000. Do you mean this whole contract ?

Q. Was it in writing ? A. Yes, sir.

Q. Have you a copy of it ? A. I have not, with me.

Q. Have you at your place of business ? A. I don't know whether I have now or not. I think I could find a copy of it. It was all closed up some time ago.

Q. All that the Company had received from you for the full value of the stock was twenty-five per cent. A. All the stock cost me was \$25.00 a share.

Q. That you paid the Company ? A. Yes, sir.

Q. This order that was presented to you by Mr. Fuller was signed by Judge Barnard, was it not ? A. I understood that it was an order issued by Judge Barnard, but I think it was signed by some clerk of the Court ; I am not positive as to its being his signature.

By Mr. TILDEN :

Q. It was a certified copy ? A. I think it was a certified copy. I understood from Mr. Fuller that it was an order from Judge Barnard.

By Mr. CURTIS :

Q. You understood it had been granted by Judge Barnard ?
A. Yes, sir.

Q. Were any other papers, besides the order, served on you ?
A. No, sir.

Q. Previous to this time, had any summons in any suit been served on you ? A. Not to my knowledge ; I think not.

Q. Afterwards ? A. I think very likely afterwards.

Q. Do you know who the party in that suit was ? A. A man by the name of Bush, I think.

Q. A stockholder in the Albany and Susquehanna Railroad Company ? A. I cannot answer that. I think you will find a copy of that contract in that book you have. (Referring to the printed testimony in the case of "*The People agt. The Albany and Susquehanna Railroad Company.*")

Mr. STICKNEY :

I will put that in by and by. I don't think there is anything further.

By Mr. TILDEN :

Q. Do you know whether this stock that you purchased was stock that was forfeited for the non-payment of installments ?

Mr. STICKNEY :

We will prove that.

A. I always understood it was.

Q. You were at this time amply responsible, were you not ?
A. For what ?

Q. For any damages that might have been recovered in any suit ? A. I think so.

By Mr. NILES :

Q. So far as you know, was your responsibility questioned outside at all ? A. No, sir.

By Mr. TILDEN :

Q. Would your responsibility be questioned for a million of dollars ? A. I will answer that question in this way : We are rated as high as anybody on the commercial books, that is, for credit.

JOSEPH H. RAMSEY, a witness, being duly sworn, testifies.

By Mr. STICKNEY :

Q. You were, in August, 1869, President of the Albany and Susquehanna Railroad Company? A. I was.

Q. We have been told here a great deal under oath, by Mr. David Dudley Field, as to a certain illegal issue of stock to Mr. Groesbeck. Will you produce a resolution of the Board of Directors of the Albany and Susquehanna Railroad Company, under which certain stock was sold to Mr. Groesbeck? A. There it is. (Producing a paper.)

Q. This is the resolution? A. Yes, sir.

The resolution is read in evidence, in the words following :

“ ALBANY, June 3, 1868.

“ At a meeting of the Board of Directors of the Albany and Susquehanna Railroad Company, held June 3, 1868, present, Mr. Austin, Mr. Cagger, Mr. Cook, Mr. Everts, Mr. Ford, Mr. Goodyear, Mr. Harder, Mr. Leonard, Mr. North, Mr. Ramsey, President, Mr. Sherman and Mr. Westover.

“ On motion of Mr. North,

“ *Resolved*, that the contract with David Groesbeck, and others, by the President, is hereby approved, providing for a loan of \$560,000 upon \$800,000 of the second mortgage bonds of the Company, for 18 months, with the privilege or option to said Groesbeck and others of taking the bonds within fifteen months at eighty per cent. and \$240,000 of stock of the Company at twenty-five per cent, unless better terms can be obtained by the Finance Committee, prior to the 10th of June, instant.”

Q. Was any stock ever issued to Mr. Groesbeck; I mean originally issued? A. This was stock that had originally been subscribed for, and upon which there had been ten per cent and upwards paid; I think some as high as seventy per cent.

Q. All the way from ten per cent to seventy per cent? A. Yes, sir; there were some six thousand shares, I think, in all that had been part paid for and afterward forfeited for non-payment of the balance.

Q. It was that stock that was sold to Mr. Groesbeck under this resolution? A. Yes, sir; the stock at that time was selling in the market for about twenty, at the time that contract was made.

By Mr. PRINCE :

Q. Full paid stock of the Company? A. Yes, sir; full paid stock was selling in the market for about twenty.

By Mr. STICKNEY :

Q. Was any stock ever sold or issued to Mr. Groesbeck up to the first of August, 1869, except under this resolution? A. No, sir; that was all the stock there was.

Q. Had Mr. Leonard, Mr. Everts, Mr. Ford, or Mr. North, the Directors, who are recited as being present when this resolution was passed, or either of them, ever made any complaint whatever as to this Groesbeck contract, or as to the sale of the stock to Mr. Groesbeck? A. No, sir; previous to that, Mr. Leonard had initiated the sale of \$50,000 of bonds, and had given an option of three hundred shares of the forfeited stock at twenty. That was double the amount of stock, and at a less price than this negotiation.

By Mr. TILDEN :

Q. What do you mean by double the amount? A. Double the amount in quantity.

Q. In the proportion of the stock? A. Yes, sir.

Q. The bonds and stock were put together in the transaction? A. Yes, sir.

Q. A certain amount of bonds, and certain amount of stock?

A. Yes, sir; the bonds had to be taken at eighty, to enable them to obtain the option of taking the stock.

Q. What was the amount you valued the bonds at at that time? A. They really had no market value at that time. Our road was uncompleted. We had twenty-six miles of the heaviest portion of our line in which there was a tunnel incompleted, and this loan was obtained for the purpose of completing the road. There was a question at that time whether this amount of money would complete it; but Mr. Groesbeck and others believed what I stated, and they thought this amount of money would complete the road, and they took that risk. Mr. Peter Cagger was then in the Board. The matter was talked over, of the importance of completing the road, and Mr. Cagger stated, I think, that there was no question but that the Company ought to accept this proposition. He stated the great importance of having the road completed. Upon that Mr. North took up the resolution, which had been prepared, and offered it, and it was adopted unanimously. I never heard any complaint of it until the commencement of these proceedings by Mr. Gould. That was substantially the commencement of it. Upon the Rochester trial, Mr. Bush stated that after a conference with Jay Gould, he commenced the first suit.

By Mr. STICKNEY :

Q. How many shares of stock in all were sold to Mr. Grosbeck under this arrangement? A. The amount was 2,400 shares?

Q. We have also been told by Mr. David Dudley Field, about the illegal issue of forty-four shares of stock made by you or by your order to Jared Goodyear, on a part payment of value; state what it was? A. It was entirely untrue. Mr. Goodyear subscribed in the first place for \$5,000 of stock—had made a subscription for 50 shares unconditionally. Afterwards he made

another subscription, in addition, for forty-four shares, conditioned upon the location of the road by a certain place. This road afterwards was located at or very near the place that it was to be located according to that condition. There was some little question about it, but Mr. Goodyear subsequently paid the full value of the stock at par.

By Mr. TILDEN :

Q. That is the par amount? A. Yes, sir; the value of the par amount and he took the same.

By Mr. STICKNEY :

Q. That was before the beginning of this litigation? A. Yes, sir, before the beginning of this litigation. It was some months previous to this litigation.

Q. We have also been told by Mr. David Dudley Field, under oath, that 9,500 shares of stock of the Company had been subscribed for by yourself and another gentleman, and that there was at no time any intention of paying anything on account of this subscription. State how much was at once paid by all or on the part of all these gentlemen on these subscriptions of stock? A. My testimony in the—

Q. Never mind that, state. A. After the subscription was made on Monday a check or draft was drawn by me on Mr. Groesbeck for \$100,000, which I gave to Mr. Robert H. Pruyn, who was to take it to Mr. James H. Hendricks, a banker at Albany, and he endorsed the check and afterwards obtained the money at the Mechanics' Bank—\$100,000—and it was put into the treasury of the Albany and Susquehanna Railroad Company.

Q. Amounting to how much on the par value? A. Ten per cent.

Q. Was that the regular amount paid on subscriptions? A. Yes, sir; I say \$100,000—I mean \$95,000.

Q. It was regular? A. \$95,000, I think—at any rate ten per cent. on the amount of the stock subscribed.

Q. And subsequently all the balance up to the full price of this stock was paid? A. The full price of par has been paid into the treasury and a large proportion of the whole expended in laying a third rail?

Q. Mr. David Dudley Field also stated that you were at one time, or several times, largely in debt to the Albany and Susquehanna Railroad Company.

Mr. CURTIS :

I do not recollect any such statement.

Mr. PRINCE :

You may change the form of your question.

Q. Have you at any time been in debt to the Albany and Susquehanna Railroad Company? A. I have not.

Q. Will you state what took place at the election of Directors on the 7th day of September, 1869? A. Do you propose to have a history of the whole proceedings on that occasion?

Q. Give particularly only the points connected with Mr. Field's and Mr. Fisk's attendance there. Who came with them; and give the circumstance of that arrest and what Mr. Field did and said at the time? A. My testimony will be substantially the same as contained here (referring to the printed testimony in *The People against the Albany and Susquehanna Railroad Company*).

Q. We have not it in evidence. A. Previous to the election—commencing in the morning do you mean?

Q. I ask you the circumstances of Mr. Field and Mr. Fisk coming there and who came with them. A. Mr. Field and Mr. Fisk came there with quite a number of laboring men—"roughs" as they were termed—and went into the Directors room.

Q. David Dudley Field? A. David Dudley Field.

By Mr. PRINCE:

Q. That was on the day of the election? A. Yes, sir. He proceeded there and they followed him—Mr. Fisk and others—into that room and took possession of it.

By Mr. STICKNEY:

Q. At that time were you arrested? A. I was arrested.

Q. Tell everything that took place, beginning with Mr. Field's arrival there. A. While the room was filling up I heard a noise out in the hall, and I looked out, that is, from the treasurer's room, and I saw Mr. Field, Mr. Fisk and others, followed by the persons that I have named, go into the Directors' room. I then went into my own room—that is, the President's room. There was a door opening from that room into the Directors' room. That was open. I heard Mr. North call the meeting to order and I think he nominated Colonel Church as Chairman. This must have been about a quarter to twelve. At that moment a gentleman stepped up to me, who turned out to be the Sheriff, and he said he had an order of arrest for me. I made inquiries as to particulars and about that time Mr. Smith came in.

Q. What Mr. Smith? A. Henry Smith, my counsel.

Q. The present Speaker of the Assembly? A. The present Speaker of the Assembly. I learned then that he was arrested, and that Mr. Phelps, our treasurer, had also been arrested. There were some blank bonds there; that is, I was making preparations when Mr. Smith came in to give bail. Mr. Groesbeck happened to be in my room at the time, and Mr. J. Pierrepont Morgan. Mr. Smith came in and said he was arrested. Then I said to him, "Mr. Smith, you had better go out and attend to our stockholders' meeting." I thought this delay might—perhaps it is not proper for me to state what I thought at that

time—at any rate, I directed him to go out and attend the stockholders' meeting, and said that I would attend to giving the bail. As Mr. Smith was going out, I said, "You had better sign a blank bond, and we will have it filled up." He did so, and I think he then left. The bonds were then filled up. There was some objection made, I believe, to Mr. Groesbeck on account of his not being a freeholder. Mr. George Clark, of Otsego, happened to be, fortunately, in the room at the time, and he said, "I rather think I am a freeholder, and I will be your bail, if there is any objection on that score." The bonds were filled out and executed, and the sureties justified each in \$50,000—double the amount of the order of arrest, which was \$25,000 in each case, and I was released. In the meantime—or, I should have said, before Mr. Smith came into the room—I started to go out and find him, and the Sheriff declined to have me go out of the room, and he said he wished I would remain there and not go out.

Q. Did he allow you, at any time, to go through the building?

A. No, sir. I did not leave the room until the bail was perfected, which, I think, took about half-an-hour. It happened, very fortunately, that these men were there.

Q. If these gentlemen had not been there, whom else could you have got? A. I should have sent out, probably, for Mr. Olcott, or some gentleman out in the street, and it would have taken a couple of hours at least.

Q. They were both residents of New York? A. Yes, sir.

Q. Residents in New York city? A. Yes, sir; Mr. Morgan and Mr. Groesbeck.

Q. Can you state whether Mr. Shearman appeared at all in that room where you were, or consented to this bail being accepted at all? A. My impression is that it was Mr. Shearman who objected to the bail.

Q. Objected to the bail? A. At any rate, there was some one there who made inquiry as to whether Mr. Groesbeck was a freeholder or a householder.

Q. Did Mr. Shearman consent to that bail at any time? A. No, sir, I do not know that he did.

Q. What did Mr. David Dudley Field do while you were there in the hands of the Sheriff? A. Mr. David Dudley Field was about there during the time that I was in the room. He came to the door of my room from the treasurer's room, and stood in the door between my room and the treasurer's room, leaned up against one side, and had his thumbs in his vest in this manner [showing the thumbs of each hand resting in the arm-holes of the vest], and he said to me, "How are you now, Ramsey," or "How is it now, Ramsey?"—I will not be certain which expression.

Q. This was while you were in the Sheriff's hands? A. Yes, sir, it was before the bill was completed, and while their election had just commenced, as I understood it.

Q. Did you understand Mr. Field to be making an inquiry as to the state of your health? A. I cannot say any further than that he seemed to be —

Q. What was his manner? A. It was rather of an exultant manner.

Q. Had he ever, before that, expressed any anxiety or care about the state of your health? A. I did not understand him as inquiring after my health. I felt rather sober myself, and he felt in very good spirits. His plans had succeeded, and he appeared to feel in very good spirits.

Q. Your recollection is very clear on that point, is it not, as to what took place then? A. I have conversed with Mr. Morgan and he recollects the same thing.

By Mr. CURTIS :

Q. Don't give what other people recollect. The inquiry is what you recollect. A. I recollect distinctly that Mr. Morgan was near by. It was about the time that Mr. Smith came in, and while Mr. Smith was there at any rate, I do not know whether it was the first time that Mr. Smith came in or the second. I think it must have been the second time. I mean Henry Smith, my counsel.

Q. In regard to this stock issued to Mr. Groesbeck which had been forfeited. How much of that stock had there been \$70 paid on? A. Very little as much as that. It was from ten to seventy dollars. Probably on a majority of it—a large majority—there had not been more than two or three instalments paid.

By Mr. STICKNEY :

Q. In instalments of what amount? A. Ten dollars a share. When the stock was subscribed for there was ten per cent. paid at the time, and the balance was paid in instalments as it was called for—in instalments of ten per cent., which makes nine instalments, in addition to the first ten per cent. paid.

By Mr. CURTIS :

Q. There was very little on which seven instalments had been paid? A. Very little. I cannot say how much.

Q. Can you say how much there was on which seven instalments had been paid? A. I cannot. I believe that Mr. Phelps has made a table showing just the amounts paid.

Q. Was not the larger majority of this forfeited stock on which there had not been more than one instalment paid? A. The whole amount of forfeited stock. I think, perhaps, the payments would average about two instalments—that is, twenty dollars per share.

Q. The larger part of it? A. I should think it would average that value.

Q. Now as regards the 9,500 shares subscribed by you and the other Directors? A. They were not all Directors who subscribed.

Q. Did you know those persons? It was all subscribed in one evening was it not? A. No, sir; there was a portion of it subscribed one evening and the balance the next day.

Q. You drew a check on Groesbeck in order to pay the ten per cent. of that subscription? A. Yes, sir.

Q. Then was the stock issued? A. No, sir. It could not be issued until it was fully paid.

Q. It was never issued until it was fully paid? A. I do not understand that it could be transferred. I do not understand now that stocks subscribed can be transferred until fully paid. I believe that the statute forbids its transfer until it is fully paid.

Q. I want to know what the fact was. A. That is so. It was not transferred.

Q. It was not issued to the subscribers? A. It was not issued to the subscribers.

Q. This subscription was made just previous to the election? A. It was made in August.

Q. Was it not made with a view to the election? A. It was made, yes, sir; that is, it was made—if you desire to have me state, I will state the circumstances. It was after this stock had arisen to par, and there was considerable excitement. We felt, that is I did for one, and many of the stockholders did—that if the road should fall into the hands of Gould and Fisk and these other parties, the stock would be ruined and we were willing to take that risk. It certainly was not to speculate in the stock, but it was to save, as we believed, the property of the Company from destruction.

Q. You intended, and the other gentlemen subscribing, to vote upon it at the election? A. Yes, sir.

Q. And you made your preparation to vote upon it at the election? A. Yes, sir.

Q. After paying ten per cent. on it? A. Yes, sir.

Q. Previous to the election you had not paid any more than ten per cent. had you? A. No, sir.

Q. The check drawn on Groesbeck—had you any funds with Groesbeck at the time the check was drawn? A. I made an arrangement with Groesbeck to give him my individual note, and there were Company bonds there temporarily left with Mr. Groesbeck as security.

Q. Was it understood between you and Mr. Groesbeck, either before you drew that draft or afterwards, that he should hold these Company's bonds in order to meet that draft? A. It was understood at that time that the bonds were to remain there temporarily, until I could make another arrangement.

Q. Were not these bonds in the Company's safe, in Albany, at the time you drew the check on Groesbeck? A. No, sir.

Q. Were they in Groesbeck's hands at that time? A. Yes, sir.

Q. For what purpose were they in his hands? A. We had had bonds in his possession for the purpose of negotiation, and at that time, or previous to that time, they had been taken there by me and left with him; at the time of that arrangement it was understood what the money was to be raised for.

Q. Then you applied the hundred thousand dollars of bonds of the Company, did you not, to the raising of an amount of money by means of this negotiation with Mr. Groesbeck in order to pay him this ten per cent. on this stock, subscribed for, and you and the other subscribers were to vote upon it at the election? A. There were a hundred and fifty thousand dollars of bonds there that were left there temporarily; I gave him my individual note for the money.

Q. Did you ever pay him that note? A. Yes, sir.

Q. At that time did he not rely on your note? A. He took my note individually. At that time I felt it was a matter—

Q. He required something more? A. I said that this \$150,000 of bonds was left there temporarily, until I could make some other arrangement to secure him.

Q. He was secured, then, for a time, by the bonds? A. Yes, sir; the bonds afterwards were surrendered, and never used for that purpose—that is, they were never sold.

Q. You have said that subsequently all the par upon this stock has been paid? A. Yes, sir.

Q. How long after that election was it paid? A. I think it must have been paid the latter part of January or the fore part of February following the election; it was after the matter had been decided by Judge Smith; it was after the Rochester trial.

Q. After it had been decided that you and the other gentlemen were the lawful Directors of the road? A. Yes, sir; and that that subscription was a valid subscription.

Q. Then you paid up? A. We paid up the subscription.

Q. Did you vote on that stock at the election, or did the holders vote? A. No, sir.

Q. You were prevented by the injunction, were you not? A. Yes, sir.

Q. At the time when this election was approaching, were not the Directors and stockholders of that Company divided into parties, in respect to the approaching election, one called the Church party and the other the Ramsey party? A. I cannot say that there was; Mr. Church had not been a member of the Board; in fact he was made, I believe, a stockholder by a transfer to him of five shares, only a few days before the election; he had immediately before that had no connection with the Company, nor had he been a stockholder previous to the transfer of these five shares to him. There were the year before several men elected—we have never had any contest previous to

the year before—but two of the men, who finally went in with Gould and Fisk, went about obtaining proxies, under pretence that they were my friends, and on the morning of the election I first found out—

Q. You are speaking about the election of the previous year?
A. Yes, sir.

Q. When this election for the year 1869, in August, was approaching, there was more or less division of sentiment, was there not, among those who were Directors and stockholders, in respect to the approaching election? A. I do not know of any division in any vote of the Board of Directors, but there was a division—there were parties in the Board that had got in through misrepresentation, and who were opposed to me.

Q. That is what I want. There was a party in the Board opposed to you? A. Yes, sir; although there was not in any vote on any matter coming before the Board; there had been no particular division that would indicate a division of sentiment.

Q. Upon the election there was a close contest as to who should control that road? A. It was not so close as we supposed it would be.

Q. It was expected to be close? A. After Gould and Fisk went to buying the stock at par it was then supposed that they might perhaps get a majority of the stock.

Q. There would be a close contest? A. Yes, sir; that was so.

Q. When the election came on, of those who were opposed to you, who were present—I want to ascertain whether you recollect the presence of the gentlemen I shall name. Was Mr. Leonard there? A. When was that?

Q. When the election took place was Mr. Leonard present?
A. I think he was; that is, he was about the premises there.

Q. Was Mr. Chase present? A. Yes, sir.

Q. Mr. Wilbur? A. Yes, sir.

Q. Mr. Courter? A. Yes, sir.

Q. Mr. Cole? A. Yes, sir.

Q. Mr. Everts? A. Yes, sir.

Q. Mr. Fisk? A. Yes, sir.

Q. Mr. Church? A. Yes, sir.

Q. Mr. Stanton Courter? A. Yes, sir; he was about there—he was a son of Charles Courter.

Q. Mr. Hamilton Harris? A. Yes, sir.

Q. Mr. Bush? A. Yes, sir.

Q. Mr. Oliver? A. Yes, sir.

Q. Those gentlemen whom I have named acted together in opposition to you at the election? A. Yes, sir; they had not all been Directors, however, but they acted against me.

Q. Did they act together against you? A. They acted against me, and I suppose they acted together.

Q. Did they all hold either stock or proxies, so far as you

were informed—did they all participate in the election either by certificates of their own or through proxies from other people?

A. I think they did—no, I think most all of them gave their proxies to Mr. Harris, and Mr. Harris did the voting.

By Mr. NILES:

Q. Did they represent proxies? A. I think they gave Mr. Harris their proxies.

Q. They were either stockholders or else proxy holders?

By Mr. CURTIS:

Q. That is what I want to know. A. Yes, sir; I think Mr. Harris voted for all of them. They were about there, and had taken part in the proceedings.

Q. They constituted, did they not, what was called the Church party? A. Yes, sir.

Q. Were not Messrs. David Dudley Field, Judge Amasa J. Parker, Mr. T. G. Shearman, the partner of Mr. Field, and Mr. Redfield, present as counsel for the Church party, or of those who were in opposition to you? A. Judge Parker was there a part of the time. Mr. Field, of course, was there. Mr. Redfield I do not recollect; he may have been there.

Q. You recollect Mr. Shearman? A. I recollect Mr. Shearman; he was there.

Q. On your own side, you were present yourself. Was Mr. Hendricks there? A. Yes, sir.

Q. Mr. Rice? A. Yes, sir.

Q. Mr. Perry? A. Yes, sir.

Q. Mr. Dawson? A. Yes, sir.

Q. Mr. Blackall? A. Yes, sir.

Q. Mr. McCormick? A. Yes, sir; he was about there.

Q. Mr. Clark? A. What Clark?

Q. I do not know his given name; but was there not in your party a man named Clarke? A. There was a town commissioner by that name.

Q. Mr. Harder? A. Yes, sir.

Q. Mr. Westover? A. Yes, sir.

Q. These acted together in support of your ticket, did they not? A. Yes, sir.

Q. Besides these ten persons I have named as being present and constituting your party, as I call it, the counsel on your side was Judge William F. Allen? A. Yes, sir.

Q. Judge Porter? A. Yes, sir.

Q. And Mr. Vanderpoel? A. Yes, sir.

Q. Mr. Charles Tracey? A. I do not know that they were all acting. They were about there in the city. I do not know that that they were all present.

Q. Mr. Hand? A. Yes, sir. He was in there—that is not at the election.

Q. Are you sure of it? A. He was there a part of the time. He was not all the while. He did not officiate as one of the Inspectors.

Q. Mr. Smith—the present Speaker? A. Yes, sir.

Q. Mr. Peckham, Jr.? A. Yes, sir.

Q. Mr. Hale? A. Mr. Hale was there—no he was not there, I guess. He may have been there a part of the time. These gentlemen were not there all the while. He may have been there during some part of the proceedings. Mr. Smith and Judge Allen were the principal counsel, and were there during the whole proceeding.

Q. Mr. McFarland? A. Mr. MacFarland was about there.

Q. Mr. Moak? A. He was in the city. I do not know whether he was there at the time of the election or not.

Q. Mr. Swartz—was he there? A. He may have been there during some part of the proceedings. They were not all there taking a part in it.

Q. Was Mr. Fuller, a lawyer, who claimed to be the Receiver of the Groesbeck stock? A. Yes, sir.

Q. Mr. Groesbeck was there? A. Yes, sir.

Q. I have enumerated as present seventeen persons on the Church side, and twenty-one persons as present on your side, taking part in the election there as stockholders or as counsel. Is that your estimate of the number of persons respectively on the two sides? A. There were many more there. All these persons that you have named were there at different times during the day. They were not all there at one time, I do not think. At any rate, I know the counsel were not, because you have named there the members of different firms, and there was at no time more than one member of a firm who was there. They were out and in during the proceedings—previous and during the election.

Q. How many persons were there in your interest, on your side, who were not stockholders? A. Well, sir, that would be difficult for me to say. There were many people there, spectators, undoubtedly.

Mr. NILES:

Do you include fighting men?

Mr. CURTIS:

I want to know how many were present there? A. There were quite a number of stockholders who were there besides those who voted through proxies. There were quite a number who voted. There was quite a number of Town Commissioners who voted for the towns in person.

Q. Was there not a large number of persons who were in the employ of the road? A. No, sir; not in the room.

Q. Not in the room? A. No, sir.

Q. Are you confident of that? A. I am.

Q. Where were they? A. What?

Q. I mean laboring men—were they not there? A. In the morning there were some men that were outside, but the police were there during the election. After ten o'clock I do not think there were any men—any laboring men there; at any rate, not when I participated in the election. There may have been some outside, but there were not inside, that I recollect.

Q. Don't you recollect that there were men who were in the employ of the road, or who belonged in Albany and in the neighborhood thereof, and very rough characters, who came into the room before the election commenced. A. No, sir; there were no rough characters there on the part of the Company—on my part—that is, those that were acting with me. At any rate, they were not there upon our invitation, I know. There were rough men there, but they were not there at our instance. If there were rough men who were in our favor, they came of their own accord.

Q. When the vote took place did not the parties occupy respectively different ends of the room, as a general thing? A. There was a desk or counter, perhaps half longer than that table. [about eight feet,] and one of the polls was held at one end, and the other at the other end. Mr. Harris held his poll. There is a diagram, I think, in the room, by which I can show.

By Mr. PIERCE:

Q. Give it in feet. A. The elections were held about six feet apart.

By Mr. CURTIS:

Q. In your end of the room were there not a good many standing who were not stockholders? A. I do not know of any. I do not recollect seeing any men in the room; that is, the room where the election was held was not the room where the stockholders' meeting was held.

Q. I speak of the stockholders' meeting. A. There may have been. The stockholders' meeting, at which Mr. Hendricks was chairman, was held in the hall, and the other stockholders' meeting was held in the Directors' room. That was the room we intended to have the whole of the stockholders meet in. We did not think there were to be two stockholders' meetings.

Q. How long do you think it was after you were notified by the sheriff that you were arrested, that the bail-bond was executed? A. As I stated, I think about half an hour.

Q. Do you think it was as much as half an hour? A. I think from the time I was first arrested until we got the bail-bonds completed and were discharged.

Q. The Sheriff in no way interfered with your moving about, did he? A. Not in my own room.

Q. Where you were? A. But he refused to let me go out of the room.

Q. He did not permit you to pass into the next room? A. No, sir. I wanted to go into it and see Mr. Smith, and he declined to let me go.

Q. But then you suffered no inconvenience? A. No, sir; nothing more than I have stated.

Q. From being restrained to that room you suffered no inconvenience? A. Nothing more than I could not take part in the proceedings. It was at a very critical time, and we all supposed then—

Q. Did you deposit your vote when it came to a vote? A. Yes, sir; but I did not vote, perhaps, until one o'clock.

Q. You did vote? A. Yes, sir. I had a large number of proxies. Almost all the proxies were in my possession.

Q. Are you familiar with the contents of this volume—the case of the People against the Albany and Susquehanna Railroad Company? A. Yes, sir, I am familiar. I was present during the trial, and I have examined the case as settled since then.

Q. As settled for the Court of Appeals? A. Yes, sir.

Q. The case on the appeal? A. Yes, sir.

Q. Does not the case on appeal, as settled, contain all the papers on both sides in reference to that contest? A. I believe it does, although I have not examined with express reference to ascertain whether it contained all the papers or not.

Q. Does it not contain all the principal papers? A. I suppose it does.

Q. Of the suits instituted on your side, and the suits instituted on the other side? A. I suppose it does. As I said before, I have not examined it with express reference to ascertain the fact.

ROBERT L. KENNEDY, a witness, being duly sworn, testifies:

By Mr. PARSONS:

Q. Are you, and if so, for what time have you been President of the Bank of Commerce, in this city? A. For the last three years.

Q. Is that the largest banking corporation in the city of New York? A. Yes, sir.

Q. What is the capital of your bank? A. Ten millions of dollars.

Q. How long have you been yourself, a resident of the city of New York? A. For forty-nine years and six months.

Q. Since your birth? A. Yes, sir.

Q. Are you, and have you been for some years, largely acquainted among business men in the city of New York? A. Yes, sir.

Q. Do a large number of business men and firms transact banking business with your bank? A. Yes, sir; a great many of them.

Q. Has your attention been drawn for the last few years to the action of the Courts in this city? A. Yes, sir.

Q. Has that action been a subject of conversation among business gentlemen with whom you mix? A. Yes, sir.

Q. State the prevailing opinion or sentiment on the part of business men in the city of New York in respect to the Courts here? A. That is rather an indefinite question, and I hardly know how to reply to it. There is a feeling of dissatisfaction with reference to the course of the Courts in certain cases.

Q. A prevailing feeling on the part of the business community? A. Yes, sir; I should think so—decidedly so.

Q. Is it a feeling in respect to the action of certain Judges? A. Yes, sir.

Q. What Judges? A. Judge Barnard, more than any one else I have heard mentioned.

Q. What other Judge? A. I shouldn't say that I was aware of any particular conversation in regard to any other.

Q. Does this feeling that you speak of, in reference to Judge Barnard, originate in any action on his part—any particular action which you have in mind? A. No particular action, but a general impression in regard to the granting of injunctions, so much so, that it is a common saying that we are happy to be allowed to go home and eat our dinners without an injunction against us.

Mr. TILDEN :

Ask whether the witness prefers Receivers to injunctions.

Q. You are aware of such action on the part of the Court as the appointment of Receivers. Do you know any such action?

A. Not of my own knowledge, except ordinary reports—what is stated in the newspapers. I have no personal knowledge of any such action.

Q. When you speak of injunctions, do you include Receiver-ships as embraced under the same general head? A. Yes, sir.

Q. What opinion, if any, prevails in the business community with respect to the action of Judge Barnard in suits and proceedings, where any particular litigants have been involved or have been parties? A. I recollect the Erie Railway. There is quite a common impression in regard to that. I should say that I am intimately acquainted with Mr. Ramsey, and have been familiar with the litigation between him and the Erie Railway Co., in regard to the Albany and Susquehanna, which has since come under the Delaware and Hudson Canal Co., of which I am a manager.

Q. I don't ask in reference to transactions about which you know yourself, but what is the prevailing sentiment among business men, in respect to any action on the part of Judge Barnard, where were concerned the interests of special litigants? A. An unfavorable opinion.

Q. Can you name the litigants in connection with whom Judge Barnard's action is unfavorably mentioned? A. That particular contest between the Erie Railway Co. and the Albany and Susquehanna Railroad Co.

Q. Any others? A. No, sir; I am not aware of others.

Q. Has this feeling of which you spoke, affected in any way, and if so in what way, the value of American securities or the general interests of the State or country, and of its citizens? A. I suppose it would if it had time to act, but European capitalists are slow to move. They are hoping for a change; I can not say that I have any personal knowledge.

Q. Have you any knowledge on the subject yourself? A. I have knowledge that they are looking for better times, and that they thought there would be a change.

By Mr. CURTIS :

Has the Bank of Commerce ever been subjected to an injunction since you have been connected with it? A. No, sir; never.

Q. Has it ever been subjected to a Receivership since you have been connected with it? A. Never.

Q. And what you know and speak of in this connection is wholly in relation to common report? A. Entirely.

Q. What we call common talk? A. Yes, sir; entirely so.

Q. Did you ever hear Judge Barnard accused of pecuniary corruption in his capacity as Judge? A. I don't remember any particular instance in which I have heard so.

Q. Then the substance of it is that you have heard him spoken of as a Judge likely to unduly favor certain parties? A. I should rather say, as reckless in granting injunctions.

Q. Have you heard any particular instances spoken of? A. I don't remember, at the moment, any.

By Mr. NILES :

Q. Did I understand you to say that you have not heard any expression of a want of confidence in any other Judge except Judge Barnard? A. No, sir; I have heard expressions of a want of confidence in several gentlemen by general rumor.

Q. As to who else have you heard such expressions? A. Judge Cardozo's name is coupled with Judge Barnard's in popular report.

Q. Any one else? A. No, sir; I don't think of any one else.

Q. Do I understand you as referring to talk among business men, aside from the talk of what the newspapers say? A. Decidedly so.

Q. Have you heard any more talk with reference to the corruption of Judges Barnard and Cardozo, or of a want of confidence in their integrity, than you have in regard to other public

officers in any capacity that draws public attention towards them? I of course am excepting the Tammany ring—outside of them—any public officer who is in a public place? A. Yes, sir, I think so.

W. B. PALMER, a witness, being duly sworn, testifies:

By Mr. STICKNEY:

Q. You are President of the Tenth National Bank? A. Yes, sir.

Q. You received a circular letter from this Committee, requesting to know whether you had certain accounts of certain parties in your Bank? A. Yes, sir.

Q. You were subpoenaed to attend here? A. Yes, sir; I was subpoenaed to attend here.

Q. Have you in your Bank any account with Terrence Farley? A. No, sir.

Q. Have you had within four years? A. I can state positively within the past two years, and I think not for the prior two years.

Q. We shall have to ask you to examine and attend again, in order to answer the question? A. I am familiar with the books in the Bank, and I can state definitely that he has not had for the last four years.

Q. You can state that? A. I can say I know it.

Q. Have you had any account with William F. Howe for the last four years? A. Not in the name of William F. Howe.

Q. Have you with Howe & Hummel, within the last four years? A. We have.

Q. Have you had one with Gratz Nathan within the past four years? A. No, sir.

Q. Have you had an account with A. H. Hummel within the last four years? A. No, sir, I have not.

Q. We desire you to produce before this Committee a copy of the Ledger account of Howe & Hummel, beginning with the 1st of January, 1868, and coming down to the present time. We also want you to produce a copy of all deposit tickets of that firm for the same period, and that you also produce the separate items of all the debits in that account for the same period. How soon can you prepare that? A. Am I compelled to do that?

Mr. STICKNEY:

I believe so.

By Mr. PRINCE:

Q. How long will it take? A. I will have to instruct some clerk to do it; I cannot do it conveniently myself.

Mr. PRINCE :

You can send the party here who makes it, and that will save you the trouble of coming.

Mr. STICKNEY :

Q. Or we will allow some one from the Committee to do it ?
A. We do not like to have experts come in, for they sometimes take off things which they are not sent for ; we had copies of accounts taken off other than those mentioned in the subpoena ; if I am compelled to produce them I can produce them in forty-eight hours.

Mr. STICKNEY :

We ask to have you produce them.

Mr. PRINCE :

You can produce it on Saturday ?

WITNESS :

I will take them off and send them.

By Mr. CURTIS :

Q. Has Judge Barnard ever had an account at the Tenth National Bank ? A. Not to my knowledge.

Q. Has Mrs. Barnard ever had an account ? A. Not to my knowledge ; in fact, I know neither of them have.

Q. Have you ever seen Judge Barnard in the Bank ? A. I saw him once in the Bank ; I will not swear that it was in the Bank ; I think it was in the hall of the New York Life Insurance Company.

Q. Was it when the safe was being put in ? A. Not when the safe was being put in, but after it was put in.

Q. Did he come in there to examine it ? A. I recollect seeing him in the New York Life Insurance building.

Q. Did he ever have any accommodation at your Bank ? A. No, sir.

Q. Did you ever see Judge Barnard's name on the back of any note or check that ever went through your Bank ? A. I never saw it ; I know his name has never been used to borrow money in the Bank, or as security for anybody, in any shape or manner.

Q. Have you ever seen him over three or four times in your life ? A. No, sir ; three or four times is the extent that I have seen him.

ROYAL PHELPS, a witness, duly sworn, testifies :

By Mr. PARSONS :

Q. Are you a merchant in this city, and if so, what is your

firm? A. I belong to the firm of Maitland, Phelps & Co., and I am a merchant.

Q. How long has that firm been in existence in the city of New York? A. Seventy-six years—I beg pardon. Maitland, Phelps & Co. has only been in existence 25 years.

Q. What house did that firm succeed? A. It was the successor of Maitland, Kennedy & Co., and that succeeded Maitland, Lennox & Co. The house was established in 1796.

Q. Are the transactions of your firm local or with other countries? A. Entirely with foreign countries.

Q. With what countries? A. England, France, Germany, Brazil, the English, Spanish and Danish West India Islands, and I do not know what other places. Almost everywhere my house has connections.

Q. How long have you been a resident in the city of New York? A. Twenty-five years.

Q. During any portion of that time have you taken an interest and given attention to public affairs and the conduct of public affairs in this city? A. Yes, sir; to some extent. I have been a member of the Legislature of this State, and I have been a School Commissioner.

Q. What personal interest have you taken in the administration of local public affairs? A. Not as much, I am very sorry to say, as I ought to have taken.

Q. Have you given some attention to that subject? A. Yes, sir.

Q. How extensive is your acquaintance with business men in the city? A. My acquaintance is principally with bankers and foreign merchants.

Q. What do you mean by foreign merchants? A. Merchants doing a foreign business.

Q. And representing foreign houses? A. Yes, sir.

Q. Are you a member of the Chamber of Commerce? A. Yes, sir.

Q. How long have you been? A. Twenty-five years.

Q. Has the action of the Courts in the city of New York been brought under your observation or to your attention within the last few years? A. What do you mean by attention? I have never been in Court, or very seldom.

Q. I mean generally what you have heard stated in respect to the action of the Courts? A. Yes, sir; I have heard it spoken of very often.

Q. Has the subject been a frequent subject of conversation on the part of business men in this community during the last few years? A. The Courts of the city of New York?

Q. Yes, sir. A. Yes, sir.

Q. Is there a prevailing general opinion on the subject of the action of the Courts of the city of New York, and particularly the Supreme Court? A. Yes, sir; I should say there was.

Q. Will you state what the feeling is—that feeling or opinion?
A. The feeling or opinion in regard to what?

Q. In regard to the action of the Courts or the administration of justice in the city of New York? A. There is a prevailing opinion in the city of New York that some of the Courts are not as honestly administered as they should be.

Q. Does that opinion connect itself with the name of any particular Judge? A. There have been two names very conspicuously mentioned therewith.

Q. Be so good as to state the names? A. Judge Barnard and Judge—I do not remember the other name.

Q. Cardozo? A. Yes, sir; Judge Cardozo—those two.

Q. Has that opinion connected itself with any particular action on the part of those Judges or action on their part in connection with any particular parties or litigations? A. They have. The Erie Railway. Judge Barnard has been often discussed among merchants and bankers in his connection with the Erie Railway Co.

Q. Under whose administration of the Erie Railway Co.? A. Gould's & Fisk's—the old administration that has just resigned—just given up.

Q. Has that action produced any feeling of distrust in respect to the interests of corporations and individuals in the city of New York—their pecuniary interest? A. Yes, sir; it has.

Q. What is the feeling? A. Insecurity of the rights of stockholders.

Q. Have there been any special proceedings on the part of either of those Judges, from which ensued that feeling—proceedings of a special nature? A. I cannot say; I only speak of general impressions of the community.

Q. I say special proceedings in reference to the granting of injunctions, and appointing Receivers? A. Yes, sir; there have, both of these cases have come to my knowledge, and the general talk is, it is very damaging to the parties connected with them.

Q. Can you state whether the action of those Judges, according to the prevailing public opinion among business men, has in any way affected in value American securities and American interests? A. It has affected very injuriously Erie stock, and I think it has affected other corporations—affected other enterprises.

Q. Do you mean enterprises brought before the public? A. It has prevented other enterprises from being brought before the public, and it has prevented people from taking stock in roads which were subject to the judicial domination in New York.

Q. How general on the part of the better class of business men in the community is that feeling of insecurity and distrust? A. It has been very great. It has been so much so that many people, myself for one, have been debarred from entering into enterprises; for instance, such as the Underground Railway or

Quick Transit Company. I would not go into any of these roads, as long as I had any doubt in the integrity of the Judiciary, and a great many of my friends have the same feeling, both in this country and abroad. That is about the result of the question you ask.

Q. Are you acquainted with the opinion on that subject which prevails in countries with which you have dealings? A. I am, with England particularly, and I know that it is very unfavorable to this country, and to enterprises here. I know my friends have sold out Erie at great sacrifice, because the company was very badly managed. The phrase they have used is that "the President of the Road carried a Judge in his pocket."

Q. What Judge? A. Judge Barnard.

Q. What President? A. Jay Gould.

By Mr. NILES:

Q. You state that the impression has been that the granting of injunctions and the appointing of Receivers is injurious to the interest of stockholders. Did you ever hear anybody complain that either of these things had been done by the Courts, when it was not right and proper they should be done? A. I have.

Q. Do you state that you understand there is a general impression that such action has been taken where it is unauthorized, and where it is not proper to take it? A. Yes, sir; I would say, sir, that the impression is that an injunction could be got out by the Erie Railway Co. unjustly—that was the fear we had.

Q. Then it was not the mere fear of the legal consequences of being a stockholder, but the fear of illegal consequences? A. It was the fear of illegal proceedings on the part of the managers against the stockholders.

Q. Have you not heard of complaints made just as general as regards the other Judges, as against Judge Cardozo and Judge Barnard? A. No, sir; I have not so generally.

Q. Have you not heard other Judges named in connection with these complaints? A. I have heard other Judges named in connection with complaints of a similar nature.

Q. That is, you have heard other Judges named as Judges, in whom the people have not confidence, or in whom a good many people have not confidence? A. To some extent, but not to such an extent as I have heard of the Judges connected with the Erie Railway Co.

Q. Who have you heard named in that connection other than Judge Cardozo and Judge Barnard? A. Judge Ingraham.

Q. Do you mean to say that the feeling is that the corruption of the Judges generally is anything more than keeping pace with the demoralized state of society here in New York, in all departments of the public life and industry? A. I should say yes, that it rather led than kept pace.

Q. Is this talk about corruption in office any greater, as applicable to the Judges, than to anybody else who have held public office, to whose position public attention has been directed? A. It is. The scandal has been very great in reference to the Erie Railway Co. and Judge Barnard. Mind you, sir, I know nothing about Judges Barnard or Cardozo; I have not been in their Courts, and I have never had occasion to go in them. I merely tell you what I hear among my associates. I hope it is not true.

Q. There is a good deal of tendency to charge everybody? A. There is a good deal of corruption everywhere. This Erie affair has been a scandal and bane to the business and commerce of New York.

By Mr. CURTIS :

Q. Is there not as much scandal and the same kind of talk in regard to the administration of the New York Custom House, for instance? A. No, sir; not so much.

Q. Have you never heard the Legislature of the State of New York accused of corruption? A. I have.

Q. Have you not heard it frequently accused? A. Yes, sir; frequently.

Q. How far back does that extend? A. I have heard it certainly 10 or 15 years.

Q. Down to the present time? A. Down to the present time.

By Mr. NILES :

Q. Don't you think there are just as many charges of corruption against the Legislature as you have heard about Judge Barnard and Judge Cardozo? A. No, sir; I have not heard of any corruption of the Legislature at its present session.

By Mr. CURTIS :

Q. Have you any knowledge of the merits or demerits of what are called the Erie litigations—personal knowledge? A. I cannot say I have any personal knowledge.

Q. Is your knowledge of them derived from anything but common repute, and the newspapers? A. No, sir; I have relations with the Erie Co., which I will state by way of elucidating what I do know. I have had 1,550 shares of the stock of the Erie Railway Co. in my possession, belonging to friends, for the last year and a half, and I have not been able to get those shares registered. They were sent to have them registered in my name, or in the name of my firm, so that we would be able to vote on them, but after the seizure of Von Hoffman's shares, I did not dare have them recorded until a day or two ago, when I sold them. We could not get them registered, and somebody has voted upon them in whose name they stood.

Q. What I want to get at is the knowledge you had? A. That is all I know of my own personal knowledge.

Q. What I want to get at is whether you have any knowledge of the merits and demerits of the litigations that have been before Judge Barnard? A. Nothing but hearsay.

Q. Did you ever hear by common hearsay, anybody accuse Judge Barnard of being pecuniarily corrupt—a man who took bribes? A. No, I never heard that he took money.

[The witness in reply to a further question asked, made a statement in reference to a rumor that he had heard that Judge Barnard had received money in reference to the lease of a pier, but on being further questioned he discovered that he was mistaken, and desired to have his testimony recalled in that respect, the party being the Comptroller, instead of Judge Barnard.]

CHARLES TRACY, a witness, being recalled, further testifies :

The WITNESS :

Here is a pamphlet 9 G 1, 9 H 1, I.; and here is a pamphlet I was requested to bring in the case of Tweed, Receiver against Crane and the Corn Exchange Bank.

By Mr. TILDEN :

Q. Does this contain your affidavit that you mentioned? A. It contains my affidavit, and the affidavit of Mr. Fullerton, and of Charles E. Tracy. The next thing is this newspaper, dated April 9th, 1869, the *New York Times*, containing Judge Barnard's opinion.

Q. Do you now remember that Judge Barnard delivered such an opinion? A. I can state now the circumstances; Judge Blatchford's opinion was published in the newspapers of about the same date; I have a copy here, but I can tell you about it. It was published in the *New York World*; I found a copy of that of the date of April 7th, 1869; I also have a pamphlet copy of the opinion; it was dated the 6th of April, and was published the 7th or 8th of April. Something was said about a contempt proceeding before Judge Barnard; I didn't go there, and I took pains to see that no counsel of the defendants went there; I even cautioned my clients not to go in the room, but I procured from the stenographer who was present a perfect stenographic report, as I understood, of all that took place; I have it in my hand; I didn't know that I had preserved it; I can read the passage now from the stenographer's notes [reads] "I know positively not only that no bond was offered to me on the 7th of August, 1868, but that no bond has ever been offered to me at any time whatever, even to this day."

Q. Does the report in the *Times* purport to be a report of a written opinion? A. It does so. The stenographer's report and the papers say that Mr. David Dudley Field proceeded *ex parte* on the contempt proceeding, and stated that no one on the

other side appeared, at least he could discover no one in Court, and he would wait a little while for them to come, but he was satisfied they didn't mean to come at all, but were relying upon Judge Blatchford's opinion, and he asked the Court to proceed; Judge Barnard said, in a matter of so much importance as that, to prevent being misunderstood, he had committed the matter to writing; and thereupon he handed the manuscript to Colonel Hardie, the clerk, and directed him to read it; and Colonel Hardie read the manuscript, when the stenographer took it down—the same thing that is in the newspaper.

Q. Have you compared the stenographer's report with the report in the *Times* newspaper? A. I have not compared them, except I have generally looked at both and I saw that they corresponded.

Q. They are substantially the same? A. I presume it is exact; there is a little difference in the terms in one place—a trifling difference; in the newspaper it says, "It was handed to Colonel Hardie," and in the stenographer's notes it reads a little different. I mention that as a trivial thing on the point of the conformity between the two; in the stenographer's report it says: "The COURT—Not wishing to perform any act or make any observation, except upon the fullest deliberation and consultation, and for fear of a misconstruction or misreporting of any word that I might utter, I shall hereafter, in the ruling of all important legal questions, reduce it to writing. The Clerk will now read my views on that subject." "The Clerk read the opinion of the Court, as follows." Then the opinion is given at large as the opinion of the Court, in which he states that he shall stand on his former decision, and disregard the utterances of Judge Blatchford.

Mr. ANDREWS:

I think you had better put the whole in, and not put it in in detached portions.

(The stenographer's notes are put in evidence, and are marked 9 K, 1.)

The WITNESS:

I have here a copy of Judge Blatchford's opinion, if it is wanted.

By Mr. CURTIS:

Q. The question was, was it not, whether that case had been, in point of law, removed from the State Court into the U. S. Circuit Court? A. That was one question.

Q. Upon that, after hearing it argued, Judge Barnard pronounced this opinion which you have produced here? A. No, sir; on a former occasion Judge Barnard pronounced the opinion

which was put in yesterday at length, holding that the case was not within the Act of Congress, and that one of many defendants could not sustain a petition for removal. Subsequent to that Judge Blatchford pronounced the opinion of the 6th of April, which I put in to-day, and following that was the opinion of Judge Barnard, adhering to his first decision.

Q. Then on that question the two Courts were in conflict, were they not? A. Yes, sir.

Q. Was it not an entirely new question of law, in its actual aspect as it then arose, as to the possibility of the case of removal of the action on application of one of several defendants or less than the whole? A. It was a new question in one sense and an old question in another. It arose under a new Act, just passed, and which had not received any judicial construction by decision before that time. The resolution of the question depended upon principles which underlaid the matter which stood upon recognized decisions. In some sense it was a new, and in some sense an old matter; but it applied to a new statute.

Q. And that statute was an Act of Congress, authorizing the removal solely upon the ground that the corporation itself was the creature of Congress? A. That was a feature of the Act; it was a statute, as you will see by looking at it, relating to some other subjects of a judicial nature, and this passage is in it, providing for the removal of suits against corporations, or members of corporations, where the corporation was the creature of Congress.

Q. When you were last examined on the stand you gave an answer to a question I put to you, stating that there was complicity between Judge Barnard and Mr. Fisk, in respect to that suit. I wish to ask you whether you ever supposed Judge Barnard to have been guilty of any pecuniary corruption in that suit? A. I never did suppose that Judge Barnard received any pecuniary bribe in connection with that suit; I don't think at any time I entertained the opinion that he did.

Q. In respect to the question of complicity, you meant a disposition to favor Mr. Fisk? A. I meant a little more than that. I meant a disposition or purpose, on his part, to carry Mr. Fisk through that operation which he was performing, not merely favoring him, but to do any sort of reckless thing that would have the appearance of illegality about it, in the course of his business to carry it through.

By Mr. TILDEN:

Q. This opinion of Judge Barnard was delivered on the 8th of April. Was it in any case or motion pending that should draw the expression of any such opinion? A. In point of fact, there was no case before him at that time.

Q. Was it not a mere volunteer *pronunciamiento*? A. Perhaps not quite so, inasmuch as the counsel for the plaintiff had alluded to Judge Blatchford's decision, and had asked the Court

to defy it, and to go on and administer punishment for contempt upon the gentlemen who held this election, and moved for it in the Court, and in the course of that, he had made this argument that Judge Blatchford was wrong, and that the State authorities should not flinch in their duties. To that extent and to that subject, Judge Barnard's remarks were relevant to the matter brought before him. He did proceed, at the foot of his remarks, to give an order accordingly—an order of reference to ascertain the damages to the plaintiff, arising from the acts which were complained of, and ordered Mr. Redfield to assess the damages to those gentlemen.

Q. To that extent the so-called opinion was relevant to some matter pending in the Court? A. It was so in that form.

Q. Will you be good enough to state, with respect to myself, whether my action in that litigation was not confined entirely to the action in the Federal Court? A. Your [Mr. Tilden's] services in that matter were entirely confined to the proceedings in the Federal Court. You came in at that stage of the matter when this was about going on. The first thing you did was to render your assistance in the preparation of measures for the Federal Court, and you took leading charge of that work, and that was quite enough for one man to do.

By Judge BARNARD :

Q. Do you recollect whether Mr. Field and Mr. Shearman read before the U. S. Judges a certificate from myself that no bond had ever been filed at that time? A. I think not. I don't remember anything of the kind. I cannot say that he did not, but I don't remember it

By Mr. TILDEN :

Q. Can you name any person who was present at the time that Judge Barnard said he had driven one set of rascals, or damned rascals, outside of the State, and he was going to go for another? A. I can name David Dudley Field and Thomas C. Durant. I am able to recollect it from the deposition taken at that time. It occurred on the 29th day of March, 1869. [Referring to the stenographer's notes of the examination of Thomas C. Durant.] I perceive that Mr. Field is mentioned; it was a remark of Mr. Durant, who was a witness. I find no person named as counsel in the report, except myself and Mr. Field. The circumstances I can recall here distinctly. The witness said, in answer to the question: "I inquired at the office if any one had been sent for Mr. Ham; they said, 'yes.' "I have not been there this morning. Q. Did they say what Mr. Ham answered? A. That he had expected to be here. That was the last I heard. I presume, if you wish me to state what I suppose to be the case, that some one is advising him not to come. Q. Who? A. I don't know. There are

“some twenty Directors of the Company. Q. And that some one
“is a Director of the Company? A. I don’t know. I know that
“a majority of the Directors reside out of town, and they are
“under the impression that this is a blackmailing suit. They
“have been informed that they would have to come down or
“they will be driven out of town. Judge Barnard himself
“has said that he has driven out one set of scoundrels, and
“he would drive out another. *Mr. Field*: You know that
“was not a proper observation to make. *The Witness*: You
“asked me who, and why I could not get him here.” That
is in the deposition, and it was on that occasion that Judge
Barnard made that remark.

By Judge BARNARD :

Q. Will you look a little and see if it does not say that General Blair told him that he heard Judge Barnard say that at the Astor House? A. (After looking.) I don’t find Blair’s name mentioned, nor any allusion to that in any of the papers.

The Committee takes a recess until evening.

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